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THE BOARD OF
RAILWAY COMMISSIONERS FOR CANADA

INDEX TO VOL. XXV — XXVI
OF
JUDGMENTS, ORDERS, REGULATIONS AND RULINGS OF THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA

FROM APRIL 1, 1935, TO MARCH 31, 1936

A

PAGE

Abandonment—Algonquin Subd., Ont., between Cache Lake (M. 37·5) and Ravensworth (M. 70·5)—C.N. Rys. 542
Abandonment—Aston Subd., Que., between Victoriaville (M. 0·0) and St. Gregoire (M. 30·4)—C.N. Rys. 315, 318, 321
Abandonment—Deseronto Subd., Ont., between Trenton (M. 35·5) and Brighton (M. 45·4)—C.N. Rys. 157, 159
Abandonment—Elgin and Havelock Subds., N.B., between Elgin (M. 13·8) and Petitcodiac (M. 0·0); and between Petitcodiac (M. 0·0) and Havelock (M. 12·3)—C.N. Rys. 223, 229
Abandonment—Frelighsburg Subd., Que., between Farnham (M. 18·4) and Frelighsburg (M. 0·0)—C.N. Rys. 273, 277, 278, 283
Abandonment—Harrisburg Subd., Ont., between Brant County siding (M. 6·9) and Paris Jct. (M. 12·9)—C.N. Rys. 165, 166
Abandonment—Hemmingford Subd., Que., between St. Remi (M. 6·4) and Hemmingford (M. 21·3)—C.N. Rys. 533, 536, 539
Abandonment—Iberville Subd., Que., between Iberville (M. 21·9) and St. Hyacinthe (M. 50·0)—C.N. Rys. 269
Abandonment—Iberville Subd., Que., between Noyan Jct. (M. 0·0) and Iberville (M. 21·9)—C.N. Rys. 367, 372, 373, 378, 380
Abandonment—Iberville Subd., Que., between St. Hyacinthe (M. 50·0) and Bellevue Jct. (M. 81·3)—C.N. Rys. 258, 261, 264
Abandonment—Lakefield Subd., Ont., between Port Hope (M. 2·0) and Peterborough (M. 30·0)—C.N. Rys. 424, 428
Abandonment—Locksley Subd., Ont., between Golden Lake (M. 0·0) and National Jct. (M. 20·2)—C.N. Rys. 197, 201
Abandonment—Lovett Subd., Alta., between Foothills (M. 50·7) and Lovett (M. 55·3)—C.N. Rys. 195, 197
Abandonment—Orono Subd., Ont., between Ronnac (M. 0·0) and Greenburn (M. 41·8)—C.N. Rys. 421, 424
Abandonment—Otterville Subd., Ont., between Burgessville (M. 31·0) and Woodstock (M. 40·2)—C.N. Rys. 380, 382, 384
Abandonment—Otterville Subd., Ont., between Hickson (M. 49·10) and Tavistock Jct. (M. 55·6)—C.N. Rys. 237, 238, 239
Abandonment—Otterville Subd., Ont., between Simcoe Jct. (M. 9·1) and Otterville (M. 23·3)—C.N. Rys. 201, 203
Abandonment—Port Perry Subd., Ont., between Whitby Town (M .2·8) and Cresswell (M. 32·8)—C.N. Rys. 513, 517
Abandonment—Renfrew Subd., Ont., between Two Rivers (M. 162·3) and Cache Lake (M. 166·8)—C.N. Rys. 542
Abandonment—St. Martin's Subd., N.B., between Hampton (M. 0·0) and St. Martins M. 28·75)—C.N. Rys. 284, 288
Abandonment—Tweed Subd., between Tweed (M. 33·9) and Bannockburn (M. 53·4)—C.N. Rys. 159, 162
Abandonment—Versailles Subd., C.N. Rys., Que., between Iberville and Farnham—and running rights for C.N. over C.P.R. 551, 553, 554, 556, 557

PAGE

Abandonment—Edmundston Subd., N.B., (M. 28·2 to M. 56·4—C.P.R.. 520
Abandonment—Kettle Valley Ry. (North Fork Subd.) from West End (M. ·0) to Archibald (M. 17·4)—C.P.R.. . . . . 241, 243
Abandonment—Kootenay and Arrowhead Ry., Lardeau Subd., (M. 0) to Gerrard (M. 33·1)—C.P.R.. . . . . 253, 258
Abandonment—Orford Mt. Ry between M. ·9 International Boundary, and M. 22·8 (Eastman)—C.P.R.. . . . . 473, 476, 490, 493, 508
Abandonment—Shore Line Subd., N.B., between Shoe Line Jct. (M. 1) and Bonny River (m 29·8) C.P.R... . . . . 326, 331
Abandonment—Stobie Br. between M. 1·6 and Blezard Mine, (M. 5·02)—C.P.R... 332, 333
Abandonment—Ridgeville Spur, Ont., between Welland and Hamilton—T.H. & B.R. Co. 246
Accidents—Highway crossing—January, 1935.. 60
Accidents—Highway crossing—February, 1935.. 87
Accidents—Highway crossing—March, 1935.. 151
Accidents—Highway crossing—April, 1935.. 164
Accidents—Highway crossing—May, 1935.. 210
Accidents—Highway crossing—June, 1935.. 232
Accidents—Highway crossing—July, 1935.. 271
Accidents—Highway crossing—August, 1935.. 358
Accidents—Highway crossing—September, 1935.. 394
Accidents—Highway crossing—October, 1935.. 419
Accidents—Highway crossing—November, 1935.. 512
Accidents—Highway crossing—December, 1935.. 549
Acetylene gas—Carriage by freight—British-made cylinders—Department of Marine. 357
Advancing cartage charges for collection from consignees.. 53
Agnew. T. D., Fenton, Sask., *et al*—Grain—Rate—Saskatchewan to head of the lakes —C.N. Rys.. . . . . 19, 23, 25, 29
Alberta Block Coal Co., *et al*—Demurrage rates.. . . . . 213, 219
Algonquin Subd. between Cache Lake (M. 37·5) and Ravensworth (M. 70·5)—Abandonment—C.N. Rys.. 542
Ambassador Bridge between Sandwich, Ont., and Detroit, Mich.—Tolls—Detroit International Bridge Co.. 245
Amendment—G.O. 538 *re* regulations regarding inspection of railway steam boilers. 73
Amendment—G.O. 534 *re* Railway Safety Appliance Standards—Running boards on locomotives.. 57
Amendment—Order 52295 *re* opening for traffic Swift Current Southeasterly Br. of C.P.R. from Meyronne to Vanguard, Sask.. 246
Amendment—Regulations *re* interlocking at crossings, junctions and drawbridges.. 408
Amendment—Regulations for transportation by freight of dangerous articles—British-made cylinders for carriage of acetylene gas.. 357
Amendment—Standard conditions and specifications for wire crossings.. 393
Amendment—Tariffs C.R.C. 208 and C.R.C. 233—Correcting errors—New England Freight Assn.. 297
Amendment—Tariffs of railway companies *re* collection cartage charges.. 356
Antelope, Sask.—Crossing over C.P.R.—Cost—R.M. of Webb No. 138.. . . . . 389, 390
Apples for export—Rates—City of Victoria vs. Vancouver.. . . . . 399, 406
Arrow Lakes Lumber Co.—Lumber—Rates—Nakusp, B.C., to Prairie Provinces, etc. 30, 37, 40
Aston Subd., Que.—Abandonment between Victoriaville (M. 0) and St. Gregoire (M. 30·4)—C.N. Rys.. . . . . 315, 318, 321
Automobile Contract Ticket—Carriage of automobiles in mixed trains in British Columbia—Approval—C.N. Rys.. 138
Aylmer, Que.—Cancellation as a collection and delivery point—C.P.R.. 86

B

Baggage car traffic—Regulations—Revision—Canadian Passenger Assn.. . . . . 455, 518
Becker Lumber Co., Lethbridge, Alta.—Ruling *re* term "Fuel Wood"—C.P. and C.N. Rys.. 103
Berries—Rates—British Columbia to Prairie Provinces and Eastern Canada—Saanich Fruit Growers Assn., *et al*.. . . . . 109, 117, 119
Bloor St., Toronto—Subway—W. J. Boland vs. C.N. Rys.. . . . . 120, 124
Boland, W. J., vs. C.N. Rys.—Subway—Bloor St., Toronto.. . . . . 120, 124
Boots (rubber) and shoes—Rate—Toronto to Halifax via. C.P. and D.A. Rys.—Gutta Percha and Rubber, Ltd, Toronto—Ruling.. . . . . 539, 541
Bottles, jars, etc.—Rates—C.P.R.. 85
Bridge—Desiardins Canal at York St., Hamilton, Ont.—Cost.. . . . . 429, 437

PAGE

Bridge—Ottawa & N.Y. Ry. Co. across St. Lawrence River between Cornwall and Nyando, N.Y.—Tolls—Cornwall-Northern New York International Bridge Corporation.. .. .. .

PAGE

C.N. Rys.—Automobile Contract Ticket—Carriage of automobiles in B.C.—Approval.. 138
C.N. Rys.—Filing tariffs under M.F.R.A.. 56, 130, 137. 182, 230, 231, 292, 449, 521, 561
C.N. Rys.—Hay for relief purposes in Nova Scotia—Rates.. 55
C.N. Rys.—Opening for traffic—Tete Jaune Subd., B.C., mlge. 30·37 and 31·12.. 343
C.N. Rys.—Permission to file supp. to Tariff C.R.C. No. E-2036—Correcting rates. 107
C.N. Rys.—Permission to file supp. to Tariff C.R.C. No. E-1807—Correcting rates. 181
C.N. Rys.—Posting tariffs at stations.. 50
C.N. and C.P. Rys.—Permission to publish supps. to tariffs—Correcting rates.. 106
C.N. Rys.—Sugar—Rates—Head of the lakes via all-rail route.. 86
C.N. Rys.—Supp. to S.F.M. Tariff C.R.C. No. E-1210—Approval.. 269
C.P.R.—Abandonment—Edmundston Subd., N.B., from Cyr Diamond (M. 28·2) to Edmundston Yard (M. 56·4).. 520
C.P.R.—Abandonment—Kootenay & Arrowhead Ry., Lardeau Subd., M. 0·0 on Kootenay Lake to Gerrard, (M. 33·1).. 253, 258
C.P.R.—Abandonment—North Folk Subd., B.C., (Kettle Valley Ry.) from West End (M. 0·0) to Archibald (M. 17·4).. 241, 243
C.P.R.—Abandonment—Orford Mt. Ry. between M. ·9 International Boundary and M. 22·8 (Eastman).. 473, 476, 490, 493, 508
C.P.R.—Abandonment—Shore Line Subd., N.B., between Shore Line (M. 1) and Bonny River (M. 29·8).. 326, 331
C.P.R.—Abandonment—Stoble Br. between M. 1·6 and Blezard Mine, M. 5·02).. 332, 333
C.P.R.—Aylmer, Que.—Cancellation as a collection and delivery point.. 86
C.P.R.—Calabogie, Ont.—Cancellation as a collection and delivery point.. 239
C.P.R.—Charges—Carload traffic interswitched—Ruling.. 65
C.P.R.—Colborne, Ont.—Elimination—Collection and delivery point.. 270
C.P.R.—Cost—Interprovincial bridge between Ottawa and Hull.. 334, 339, 340
C.P.R.—Filing tariffs under M.F.R.A.—49, 131, 132, 133(2), 134(2), 135(2), 147, 148, 149, 171, 182, 183(2), 189, 244, 341(3), 343, 356, 452(2), 453(2), 510(2), 520, 558, 560, 562, 563
C.P.R.—Permission to file correct pages *re* mileages—Official Distance Table.. 51
C.P.R.—Opening for traffic—Swift Current Southeasterly Br. from Meyronne, M. 44·02, to Vanguard, M. 76·32, Sask.. 245, 246
C.P.R.—Pontypool, Ont.—Cancellation—Collection and delivery service.. 204
C.P.R.—Posting tariffs at stations.. 50
C.P. Telegraph Co.—Supp. 12 to Tariff C.R.C. No. 27—Approval.. 181
Canadian Passenger Assn.—Non-inflammable motion picture films—Carriage in baggage service.. 57
Canadian Passenger Assn.—Regulations—Baggage car traffic in Canada—Revision.. 455, 518
Canadian and U.S. carriers—International freight rates.. 67, 69, 70, 72
Carlaw Ave. and Gerrard St. E., Toronto—Subway structures—City of Toronto vs. The Consumers Gas Co., *et al*.. 45, 48
Carload minimum weights—Lumber in closed cars—Canadian Freight Assn.. 176
Cartage charges based on actual weight.. 356
Cartage charges at shipping points—Collection by railway companies.. 53
Charges—Carload traffic interswitched—C.P.R.—Ruling.. 65
Charges—Cartage service—Collection by railway companies.. 53
Charges—Dock storage at Sault Ste. Marie, Ont.—Cancellation—C.P.R.. 406
Charges—Heater—Refrigerator cars—Canadian Fruit & Vegetable Jobbers' Assn.. 393
Charges—International freight shipments—Payment—Vancouver Board of Trade.. 361, 366
Circular No. 238—*Re* highway crossings.. 190
Colborne, Ont.—Collection and delivery point—Elimination—C.P.R.. 270
Containers, corrugated fibreboard, for strike anywhere matches—Shipping Containers Ltd., Montreal.. 240
Consumers Gas Co., *et al*, and City of Toronto—Subway structures—Carlaw Ave. and Gerrard St. E.—Cost.. 45, 48
Cornwall-Northern New York International Bridge Corp.—Tolls—Ottawa and New York Ry. Co.—Bridge—Cornwall, Ont., to Nyando, N.Y.. 51, 559
Correction—Errors in rates—C.N. Rys. permitted to file supp. to Tariff E-2036.. 107
Correction—Errors in rates—C.N. Rys. permitted to file supp. to Tariff C.R.C. E-1807.. 181
Correction—Errors in rates—C.N. and C.P. Rys. permitted to file supp. to Tariffs.. 106
Correction—Errors in rates—Transcontinental Freight Bureau permitted to file supp. to Tariff C.R.C. No. 646.. 187
Cost—Bridge—Desjardins Canal, York St., Hamilton—Apportionment.. 429, 437
Cost—Interprovincial bridge between Ottawa and Hull—C.P.R. vs. Cities of Ottawa and Hull, *et al*.. 334, 339, 340
Cost—Crossing over C.P.R. at Antelope, Sask.—R.M. of Webb No. 138.. 389, 390

PAGE

Cost—Crossings over C.N.R. east of S.E.¼-8-54-7 W.3 M., and S.W.¼-17-54-7 W.3 M., Sask—Dept. of Highways, Sask.. 391, 392
Cost—Crossing over C.P.R.—R.M. of Swift Current No. 137 (Dept. of Highways, Sask.).. 385, 389
Cost—Subway structures—Carlaw Ave. and Gerrard St. E., Toronto—City of Toronto vs. The Consumers Gas Co., *et al*.. 45, 48
Crossing over C.P.R. at Antelope, Sask.—Cost—R.M. of Webb No. 138.. 389, 390
Crossing—Ramsay St., Quebec, Que.—Protection—C.N. Rys.. 289, 291
Crossings over C.N.R. east of S.E.¼-8-54-7 W.3 M., and S.W.¼-17-54-7, W.3 M., Sask.—Cost—Dept. of Highways, Sask.. 391, 392
Crossing over C.P.R.—Cost—R.M. of Swift Current No. 137 (Dept. of Highways, Sask.).. 385, 389
Crude petroleum oil—Rates—S.W. United States points to Man., Sask. and Alta.. 511
Cumberland Ry. & Coal Co.—Filing tariffs and supps. under M.F.R.A.. 147
Currency—Tariff—Transported for Bank of Canada—Express Traffic Assn.. 129
Cylinders, British-made—Containers for acetylene gas—Department of Marine, Canada.. 357

D

Dangerous practices—Motorists, etc., at protected railway crossings.. 91, 301
Dates and figs—Rates—Montreal wharf to Winnipeg—Canadian Freight Assn.. 294
Davidson, D. A., St. Laurent, Man.—Fares—Winnipeg to Laurentia Beach—C.N. Rys.. 41, 44, 45, 167
Davies, P. G., M.P.—Rates—Fish—Edmonton to Chicago, etc.. 124, 128
Demurrage penalties—Canadian Car Demurrage Bureau.. 59, 564
Demurrage Rules—Interpretation—Alberta Block Coal Co., *et al*.. 213, 219
Dept. of Highways, Sask.—Highway crossings over C.P.R. in S.E.¼-8-54-7 W.3 M., and the S.W.¼-17-54-7 W.3 M., Sask.—Cost.. 391, 392
Dept. of Highways, Sask., (R.M. of Swift Current No. 137)—Public crossing over C.P.R.—Cost.. 385, 389
Department of Marine—*Re* use of British-made cylinders for carriage of acetylene gas by freight.. 357
Deseronto Subd., Ont., between Trenton (M. 35·5) and Brighton (M. 45·4)—Abandonment—C.N. Rys.. 157, 159
Desjardins Canal, York St., Hamilton—Level highway bridge—Apportionment of cost.. 429, 437
Detroit International Bridge Co.—Tolls—Ambassador Bridge between Sandwich, Ont., and Detroit, Mich.. 245
Detroit & Windsor Subway Co., *et al*—Tolls—Detroit Tunnel.. 151, 454
Dock storage at Sault Ste. Marie, Ont—Cancellation—C.P.R.. 406
D.A.R. Co.—Filing tariffs under M.F.R.A.—137, 138, 139(2), 140, 141, 142(2), 143(2), 144(2), 145(2), 146, 147, 149(2), 150, 163, 167, 168(2), 169(2), 170(2), 172(2), 184(2), 185, 189, 190, 206, 207, 208, 230, 264, 265(2), 266(2), 267(2), 268, 293(3), 294, 295(2), 296, 297, 342(2), 354, 355(2), 451(2), 519, 521, 545, 558, 561.
D.A.R. Co—Hay for relief purposes in Nova Scotia—Rates.. 56
D.A.R. Co—Rate to Avondale, N.S.—Correction.. 107
Drums, rubber—Used for transportation of acids—Maurice A. Knight, Akron, Ohio.. 270

E

Edmonton Grain & Hay Co.—Rates—Ground feed for grain.. 1, 2
Edmundston, Subd., N.B., between M. 28·2 and M. 56·4—Abandonment—C.P.R.. 520
Elgin & Havelock Subds. between Elgin (M. 13·8) and Petitcodiac (M. 0·0), N.B.—Abandonment—C.N. Rys.. 223, 229
Errors in mileages—Correction—C.P.R. permitted to file revised pages.. 51
Errors in minimum weights—Correction—Transcontinental Freight Bureau permitted to file supp. to Tariff C.R.C. No. 646.. 187
Errors in rates—Correction—C.P. and C.N. Rys.. 106
Errors in rates—Correction—C.N. Rys. permitted to file Tariff C.R.C. E-1807.. 181
Express service—Calabogie, Ont.—Elimination—C.P.R.. 239
Express service—Colborne, Ont.—Elimination—C.P.R.. 270
Express Traffic Assn.—Supp. 19 to Tariff C.R.C. No. E.T. 694—Amendments—Regulations—Transportation by express of acids, etc.—Approval.. 563
Express Traffic Assn.—Supp. "E" to Express Classification No. 8—Approval.. 54
Express Traffic Assn.—Supp. "F" to Express Classification No. 8—Approval.. 407
Express Traffic Assn.—Tariff on currency transported for Bank of Canada.. 129

F

PAGE

Fares—Winnipeg to Laurentia Beach, Man.—D. A. Davidson, St. Laurent, Man., vs. C.N. Rys.. .. .. .

GENERAL ORDERS— PAGE

Ground feed grain—Rates—Edmonton Grain & Hay Co. 1, 2
Gutta Percha and Rubber, Ltd., Toronto—Rate—Rubber boots and shoes—Toronto to Halifax via. C.P. and D.A. Rys—Ruling. 539, 541
Guy Tombs, Ltd., Montreal, (Building Products)—Rate—Limestone—Beachville, Ont., to Hamilton—Ruling. 322, 326

H

Hamilton—Desjardins Canal, York St.—Bridge—Apportionment of cost. 429, 437
Harrisburg Subd., Ont., between Brant County Siding (M. 6·9) and Paris Jct. (M. 12·9)—Abandonment—C.N. Rys. 165, 166
Hay—Rates—Relief purposes—Nova Scotia—C.N. Rys. 55
Hay—Rates—Relief purposes—Nova Scotia—D.A.R. Co. 56
Heater services for shipments of perishable fruit—Canadian Fruit & Vegetable Jobbers Assn. 393
Hemmingford Subd., Que., between St. Remi (M. 6·4) and Hemmingford (M. 21·3) —Abandonment—C.N. Rys. 533, 536, 539
Highway crossing accidents—January, 1935. 60
Highway crossing accidents—February, 1935. 87
Highway crossing accidents—March, 1935. 151
Highway crossing accidents—April, 1935. 164
Highway crossing accidents—May, 1935. 210
Highway crossing accidents—June, 1935. 232
Highway crossing accidents—July, 1935. 271
Highway crossing accidents—August, 1935. 358
Highway crossing accidents—September, 1935. 394
Highway crossing accidents—October, 1935. 419
Highway crossing accidents—November, 1935. 512
Highway crossing accidents—December, 1935. 549
Highway crossings over C.N.R. east of S.E. ¼-8-54-7 W. 3. M., and in S.W. ¼-17-54-7 W. 3 M., Sask.—Cost—Dept. of Highways, Sask., vs. C.N. Rys. 391, 392
Highway crossings—Protected—Means of protection—And unprotected. 190

I

Iberville Subd., Que., between Iberville (M. 21·9) and St. Hyacinthe (M. 50·0)—Abandonment—C.N. Rys. 269
Iberville Subd., Que., between Noyan Jct. (M. 0·0)) and Iberville (M. 21·9)—Abandonment—C.N. Rys. 367, 372, 373, 378, 380
Iberville Subd., Que., between St. Hyacinthe (M. 50·0) and Bellevue Jct. (M. 81·3) —Abandonment—C.N. Rys. 258, 261, 264
International freight rates—U.S. and Canadian carriers. 67, 69, 70
International freight shipments—Payment of charges—Vancouver Board of Trade. . 361, 366
International Rates—Grain—Canadian Freight Assn. 204
Interprovincial bridge between Ottawa and Hull—Cost—C.P.R. vs. Cities of Ottawa and Hull, *et al*. 334, 339, 340

J

Jars, bottles, etc.—Rates—C.P.R. Co. 85
Johnstone & Co. (Becker Lumber Co., Lethbridge, Alta.)—Fuel wood—Classification—Ruling—C.P. and C.N. Rys. 103
Joint projects by railway companies—Rules covering preparation of accounts. . . . 173

K

Kettle Valley Ry. (North Fork Subd.)—West End (M. 0·0) to Archibald (M. 17·4)—Abandonment—C.P.R. 241, 243
Kootenay & Arrowhead Ry., Lardeau Subd., (M. 0·0) on Kootenay Lake, to Gerrard, (M. 33·1)—Abandonment—C.P.R. 253, 258

L

Lakefield Subd., Ont., between Port Hope (M. 2·0) and Peterborough (M. 30·0)—Abandonment—C.N. Rys. 424, 428
Limestone—Rate—Beachville, Ont., to Hamilton—Guy Tombs, Ltd. (Building Products, Ltd.). 322, 326

PAGE

Lintlaw & Nut Mt., Sask., residents of district, *et al*, vs. C. N. Rys.—Rates—Grain—Saskatchewan to head of the lakes.. .. .. .

PAGE

Ottawa & N. Y. Ry Co. bridge between Cornwall and Nyando, N.Y.—Tolls—Cornwall-Northern New York International Bridge Corp.. 51, 559
Otterville Subd., Ont., between Burgessville (M. 31·0) and Woodstock (M. 40·2)—Abandonment—C.N. Rys.. 380, 382, 384
Otterville Subd., Ont., between Hickson (M. 49·1) and Tavistock Jct. (M. 55·6)—Abandonment—C.N. Rys.. 237, 238, 239
Otterville Subd., Ont., between Simcoe Jct. (M. 9·1) and Otterville (M. 23·3)—Abandonment—C.N. Rys.. 201, 203

P

Peace Bridge—Tolls—Buffalo & Fort Erie Public Bridge Authority.. 55, 107, 247, 545
Petroleum oil—Rates—S. W. United States to Man., Sask., and Alta.. 511
Pontypool, Ont.—Elimination—Collection and delivery service—C.P.R.. 204
Port Perry Subd., Ont., between Whitby (M. 2·8) and Cresswell (M. 32·8)—Abandonment—C.N. Rys.. 513, 517
Posting tariffs at stations—C.N. and C.P. Rys.. 50
Posting ttariffs at stations—Quebec Central Ry. Co.. 187
Posting tariffs at stations—T.H. & B. Ry.. 71
Potatoes—Rates—Transportation Commission, Maritime Board of Trade.. 437, 449
Preparation of accounts—Joint projects—Railway companies—Ruling.. 173
Projects, joint—Railway companies—Preparation of accounts—Ruling.. 173
Protection—Ramsay St., crossing, Quebec, Que., Quebec Harbour Commissioners vs. Quebec Ry. Light & Power Co., *et al*.. 289, 291

Q

Quebec Central Ry. Co.—Posting tariffs at stations.. 187
Quebec Harbour Commissioners vs. Quebec Railway Light & Power Co., *et al*.—Protection—Ramsay St. crossing Quebec.. 289, 291

R

Ramsay St. crossing, Quebec, Que.—Protection—C.N. Rys.. 289, 291
Rates—Apples for export—Victoria vs. Vancouver.. 399, 406
Rates to Avondale, N.S.—Correction—D.A.R.. 107
Rates—Berries—B.C. to Prairie Provinces and Eastern Canada—Saanich Fruit Growers' Assn., *et al*.. 109, 117, 119
Rates—Bottles, etc.—C.P.R.. 85
Rates—Dates and figs—Montreal wharf to Winnipeg—Canadian Freight Assn.. 294
Rates—Fish—Edmonton, etc., to Chicago, etc.—Fishermen in Northern Alberta.. 124, 128
Rates—Grain—Head of the lakes from points St. Paul to Heinsburg, Alta.—C.N. Rys.. 219, 222
Rates—Grain—International—Canadian Freight Assn.. 204
Rates—Grain and grain products to Levis, etc., Que.—C.P. and C.N. Rys.. 407
Rates—Grain—Saskatchewan to head of the Lakes—T. D. Agnew, Fenton, Sask., *et al*, vs. C.N. Rys.. 19, 23, 25, 29
Rates—Grain, etc.—United States to Canada, etc.—Transcontinental Freight Bureau. 130
Rates—Ground feed grain—Edmonton Grain & Hay Co.. 1, 2
Rates—Hay for relief purposes in Nova Scotia—C.N. Rys.. 55
Rates—Hay for relief purposes in Nova Scotia—D.A.R. Co.. 56
Rates—Limestone—Beachville, Ont., to Hamilton—Guy Tombs, Ltd., Montreal, (Building Products, Ltd.)—Ruling.. 322, 326
Rates—Lumber—B.C. coast points to Eastern Canada—Canadian Lumbermen's Assn.. 75, 80, 85
Rates—Lumber—B.C. to Ontario—Shuswap Lumber Co., Canoe, B.C.. 211, 213
Rates—Lumber—Nakusp, B.C., to Prairie Provinces and Ontario, etc.—Arrow Lakes Lumber Co.. 30, 37, 40
Rates—Petroleum oil, crude—S.W. United States to Man., Sask. and Alta.. 511
Rates—Potatoes—Transportation Commission, Maritime Board of Trade.. 437, 449
Rates—Rubber boots and shoes—Toronto to Halifax via. C.P. and D.A. Rys—Gutta Percha and Rubber, Ltd., Toronto—Ruling.. 539, 541
Rates—Sugar—Head of lakes via all-rail route—C.N. Rys.—Corrected.. 86
Rates—Tallow (inedible)—Edmonton to Eastern Canada—Gainers, Ltd., Edmonton. 2, 8, 18
Refrigerator cars—Charges—Heater service—Canadian Fruit & Vegetable Jobbers Assn.. 393
Regulations—Baggage car traffic in Canada—Revision—Canadian Pasenger Assn.. 455, 518
Regulations—Inspection—Railway steam boilers—Amendment to Rule 8.. 73

PAGE

Regulations—Prevention of fires.. 411
Regulations—Plans—Railway crossings, draw bridges, etc.. 408
Renfrew Subd., Ont., between Two Rivers (M. 162·3) and Cache Lake (M. 166·8)—Abandonment—C.N. Rys.. 542
Revised pages to Tariff C.R.C. No. E-4737, Official Distance Table—Correcting errors—C.P.R.. 51
Ridgeville spur between Welland and Hamilton—Abandonment—T. H. & B. R. Co. 246
Rubber boots and shoes—Rate—Toronto to Halifax via C.P. and D. A. Rys.—Gutta Percha and Rubber, Ltd., Toronto—Ruling.. 539, 541
Rubber drums for transportation of acids by freight in Canada—M. A. Knight, Akron, Ohio.. 270
Rules covering preparation of accounts *re* joint projects by railway companies.. 173
Ruling—Charges—Traffic interswitched between points of interchange and team tracks—C.P.R.. 65
Ruling—Rate—Limestone—Beachville, Ont., to Hamilton—Guy Tombs Ltd., Montreal, (Building Products, Ltd.).. 322, 326
Ruling—Rate—Rubber boots and shoes—Toronto to Halifax via C.P. and D.A. Rys.—Gutta Percha and Rubber, Ltd., Toronto—Ruling.. 539, 541
Ruling—Term "fuel wood"—Becker Lumber Co., Lethbridge, Alta., vs. C.P. and C.N. Rys.. 103
Running-boards on locomotives—Regulations *re* Railway Safety Appliance Standards.. 57, 72
Running rights over C.P.R.—Iberville to Farnham, Que.—C.N. Rys.. ..551, 553, 554, 556, 557
R.M. of Swift Current No. 157 (Dept. of H'ways, Sask.)—Crossing over C.P.R.—Cost.. 385, 389
R.M. of Webb No. 138 vs. C.P.R.—Crossing—Antelope, Sask.. 389, 390

S

Saanich Fruit Growers Assn., *et al*—Rates—Berries—B.C. to Prairie Provinces and Eastern Canada.. 109, 117
St. Martins Subd. between Hampton (M. 0·0) and St. Martins (M. 28·75), N.S.—Abandonment—C.N. Rys.. 284, 288
Shipping Containers, Montreal—Fibreboard containers for strike anywhere matches.. 240
Shuswap Lumber Co., Canoe, B.C.—Lumber—Rates—B.C. to Ontario.. 211, 213
S.M.F. Tariff C.R.C. No. 1—Winnipeg River Ry. Co.—Approval.. 519
S.P. Tariff C.R.C. No. 205—N. St. C. & T. Ry.—Approval.. 340
Stobie Br. between M. 1·6 and Blezard Mine, M. 5·02—Abandonment—C.P.R.. .. 332, 333
Subway—Bloor St., Toronto—W. J. Boland vs. C.N. Rys.. 120, 124
Subway structures—Carlaw Ave. and Gerrard St., Toronto—Cost—City of Toronto vs. Consumers Gas, *et al*.. 45, 48
Sugar—Rates—Head of lakes via all-rail route—C.N. Rys.. 86
Summaries—Orders issued by Board.. ..61, 88, 152, 178, 191, 233, 248, 298, 395, 469, 527, 565
Supp. 1 to S.F.M. Tariff C.R.C. No. E-1210—C.N. Rys.—Approval.. 269
Supp. 12 to Tariff C.R.C. No 27—C.P.R. Telegraph—Approval.. 181
Supp. 19 to Tariff C.R.C. No. E.T. 694—Amendments—Regulations—Transportation by express of acids, etc.—Express Traffic Assn.—Approval.. 563
Supp. "E" to Express Classification No. 8—Express Traffic Assn.—Approval.. 54
Supp. "F" to Express Classification No. 8—Express Traffic Assn.—Approval.. 407
Swift Current Southeasterly Br. from Meyronne, M. 44·02, to Vanguard, M. 76·32, Sask.—Opening for traffic—C.P.R.. 245, 246

T

Tallow (inedible)—Rates—Edmonton to Eastern Canada—Gainers, Ltd., Edmonton. 2, 8, 18
Tariffs—Posting at stations—C.N. and C.P. Rys.. 50
Tariffs—Posting at stations—Quebec Central Ry. Co.. 187
Tariffs—Posting at stations—T.H. & B.R. Co.. 71
Tariff (S.M.F.) No. 1—Winnipeg River Ry. Co.—Approval.. 519
Tariff (S.P.) C.R.C. No. 205—N. St. C. & T. Ry Co.—Approval.. 340
Temiscouata Ry. Co.—Filing tariffs and supps. under M.F.R.A. 52(2), 146, 171, 231, 450(2), 509(2), 559
Tete Jaune Subd., B.C., mlge. 30·37 and 31·12—Opening for traffic—C.N. Rys.. 343
Tolls—Ambassador Bridge—Detroit International Bridge Co.. 245
Tolls—Detroit Tunnel—Detroit & Windsor Subway Co., *et al*.. 151, 454
Tolls—Lower Arch Bridge at Niagara Falls—Niagara Lower Arch Bridge Co.. 393
Tolls—Ottawa & N.Y. Ry Co. bridge between Cornwall and Nyando, N.Y.—Cornwall-Northern New York International Bridge Corp.. 51, 559
Tolls—Peace Bridge—Buffalo & Fort Erie Public Bridge Authority.. .. ..55, 107, 247, 545

PAGE

Toronto (City) vs. Consumers Gas Co., *et al*—Subway structures—Carlaw Ave. and Gerrard St.—Cost.. .. .. .

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXV | Ottawa, April 1, 1935 | No. 1

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Application of the Edmonton Grain and Hay Company, Limited, Edmonton, Alberta, that the rates published in Canadian Freight Association tariff No. 145 be made applicable to feed ground from the grades of grain described therein; also on salvaged fire-burnt grain.

File No. 24271.4

JUDGMENT

By the Board:

It was admitted by counsel for applicant that this matter was related to the application of the Fraser Valley Surrey Farmers' Co-operative Association and extracts from the record in that case were made a part of this record. Said application was dealt with by judgment of the Board dated January 3, 1935, Volume 24 Board's Judgments, Orders and Rulings, page 344.

With regard to ground feed grain, applicant stated his shipments consisted of ground products, chop, whole bran, feed grain, shorts and ground grain. It is not shown that there is justification for any different rate treatment in connection with applicant's products than in the case of mill feeds, or that the requirements of tariff No. 145 could be met, or policed, with respect to mill feeds or ground grain. In view of the Board's decision in the Fraser Valley Surrey Farmers' Co-operative Association case, this application, so far as ground feed grain is concerned, must be refused.

With regard to the salvaged fire-burnt grain, which is only fit for feed and of no greater value than the grades of grain covered by tariff No. 145, it should be given similar treatment and the railways directed to amend the tariff by adding to the commodities specified therein "Grain, rejected account fire-burnt" and "Grain, graded 'sample fire-burnt'".

Ottawa, Ontario,

February 18, 1935.

ORDER No. 51795

In the matter of the application of the Edmonton Grain and Hay Company, Limited, of Edmonton, Alberta, hereinafter called the "Applicant Company," for an Order requiring that the rates published in Canadian Freight Association tariff No. 145 be made applicable to feed ground from the grades of grain described therein; also on salvaged fire-burnt grain.

File No. 24271.4

SATURDAY, the 9th day of March, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Edmonton, Alberta, November 12, 1934, in the presence of counsel for and representatives of the applicant company, the province of Alberta, and the Canadian Pacific and Canadian National Railway Companies, and what was alleged,—

It is ordered:

1. That Canadian Freight Association Tariff No. 145, C.R.C. No. 154, issued by Agent F. W. Thompson, be amended by adding to the commodities specified therein, "Grain, rejected account fire-burnt" and "Grain, graded 'sample fire-burnt.'"

2. That the application so far as ground feed grain is concerned be, and it is hereby, refused.

S. J. McLEAN,
Assistant Chief Commissioner.

Complaint of Gainers, Limited, Edmonton South, Alberta, regarding rate on inedible tallow in tank cars from Edmonton to Eastern Canadian points.

File No. 38601.

JUDGMENT

BY THE BOARD:

Following written submissions of complainant and the railways, the matter was heard at sittings of the Board in Edmonton on November 12, 1934, at which Burns and Company, Limited, Calgary, and Swift Canadian Company, Limited, Edmonton, were also represented and made submissions supporting those of complainant, and the parties will be hereinafter collectively referred to as complainant. Prices quoted herein are in cents per pound and freight rates in cents per 100 pounds.

Inedible tallow is a by-product of the packing plants and used largely in soap-making. This by-product represents a comparatively small percentage of the total output of the various products of a packing plant, Gainers, Limited, stating they ship about one car per month to Eastern Canada. The value is stated to have ranged from 7 to 10 cents, in pre-depression years, to 2½ cents in 1932 and approximately 4½ cents at the time of hearing, these being delivered prices at Toronto or Hamilton. Bulletins, published by Pemberton and Company, Toronto, were filed by complainant showing the price of "regular tallow"

quoted at $4\frac{3}{8}$ to $4\frac{1}{2}$ cents on November 3, 1934. The same company's bulletin for February 16, 1935, shows the price of "regular tallow" as being $5\frac{1}{2}$ to $5\frac{3}{4}$ cents.

The rate from Edmonton and Calgary to Eastern Canadian points, Montreal and west, is 150 cents, which has been in force since 1923 (prior thereto the rate was higher), except that between August 2 and December 31, 1932, and February 6 and December 31, 1933, upon representations from the packers that the price then existing was so low that it would be uneconomical to save this particular by-product for disposal in Eastern Canada, the railways agreed to assist them by establishing, temporarily, a reduced rate of 100 cents, it being understood and agreed that the 150 cent rate would be restored when the price advanced.

In support of the alleged unreasonableness of the 150 cent rate from Edmonton and Calgary, complainant referred to rates from Vancouver of 94 cents on inedible tallow and 65 cents on fish oil; rate of 75 cents on inedible tallow from Seattle, Wash., to Buffalo, N.Y., which applies as maximum from intermediate points; rate of 100 cents on linseed oil from Medicine Hat to Montreal, and rates on fertilizer from Warfield, B.C.

The 94 cent rate on inedible tallow from Vancouver was cancelled December 12, 1934, so now requires no comment. The railways stated no shipments had been made under the rate while in force. Mr. Innes stated (p. 2477): "the Vancouver plant does not enter into the picture."

With respect to fish oil, the rate was formerly 75 cents and the railways stated that, upon being furnished with conclusive evidence that, at this rate, future shipments would move via water, they were forced to establish a 65 cent rate to retain the traffic for rail movement.

This rate is contained in a special competitive tariff publishing eastbound transcontinental rates on various specific commodities from British Columbia coast points to stations in Eastern Canada. There is a corresponding tariff publishing competitive westbound transcontinental rates on a much wider range of commodities from Eastern Canada to British Columbia coast points.

The rates in these tariffs are much lower than the regular, or normal, rates and have always been considered of a highly competitive nature, being related to the rates established on the same commodities between Eastern United States points and Pacific coast points, as well as rates put in to meet special competitive conditions, i.e., water competition or market competition. The Railway Act has express provisions permitting the establishment of competitive rates which will not be subject to the long and short haul clause, i.e., that greater tolls shall not be charged for a shorter than for a longer distance over the same line in the same direction. Such rates do not necessitate a corresponding reduction in normal rates between points not subject to the same competitive conditions, and, in numerous decisions, the Board has held that comparison as between competitive rates and normal rates is no evidence of the unreasonableness of normal rates per se. This question is dealt with at considerable length and decisions quoted in a very recent judgment of the Board (see Volume 24, Board's Judgments, Orders and Rulings, p. 344).

This transcontinental rate structure has been in existence since before the creation of this Board and has many times been reviewed in cases brought before the Board. It was the subject of exhaustive submissions to the Board, in the General Freight Rates Investigation in 1927, from interested parties in all sections of the country. The position there taken by the Province of Alberta was substantially along the lines of complainant's submissions in this case. The matter required consideration as a whole, rather than from the standpoint of what was advanced by the parties in one particular territory, and, in its judgment, the Board stated:—

> "As far as concerns three of the above enumerated features of our present rate system—namely, Transcontinental Rate Scale, Terminal

Tariffs, and the different Standard Mileages, east and west, I am of opinion that no reasons have been urged sufficient to make it advisable that the same should be eliminated or altered, as asked by various petitioners. They have been discussed individually in different rate judgments. Their origin and the reasons for their establishment and maintenance have been frequently explained and in my view such reasons stand as a justification for the continuance of these existing features of our rate system substantially unimpaired. It is, I think, unnecessary to bring into this discussion a reiteration of what has been previously decided concerning them. The Transcontinental Rate Scale has a very definite purpose, and one which should be commended rather than criticized. While it gives rise to some anomalies, nevertheless such are not by any means to prevail against the benefit of the system as a whole. It is true that some localities east of Vancouver are compelled to pay on certain commodities transportation rates greater than those charged for the long haul; but the real issue in that regard is whether the charge for the short haul is reasonable and fair. The two sets of rates are based on different principles, as is well recognized, and are not to be judged by the same standard.

Transcontinental carriage of freight has been much affected by reason of the cheaper, although much more lengthy and circuitous water route furnished by the Panama Canal. In instances wherein rapid delivery is not essential, the competition of the latter route is most formidable. The establishment of this route has deprived railways of much traffic, and wherever they can meet such competition by making low transcontinental rates, they should be encouraged to do so, and schedules framed for that purpose should not be disturbed.

A criticism of some force, however, developed through the complaint that by reason of the transcontinental rate to Vancouver and the rate eastward therefrom, certain distributors in Alberta find themselves at a disadvantage as compared with distributors in Vancouver. The instances of such were not impressive and are not to be met by alteration or elimination of the transcontinental rate. They do not touch the principle of transcontinental rates, which under present conditions needs no justification."

The same matter has subsequently been before the Board in certain individual cases and previous decisions reaffirmed.

The 75 cent rate on inedible tallow from Pacific coast points to Buffalo is also a transcontinental rate. So far as concerns the application of the long and short haul clause with regard thereto, briefly stated, prior to 1920, the situation in the United States was the same as in Canada, i.e., the transcontinental rates did not apply from and to intermediate points. In that year, the United States Act was amended, since which time there has been a fairly rigid application of the long and short haul clause in connection with transcontinental rates, although some exceptions have been authorized. There are, of course, a great many United States rates not subject to this provision, authorized by the Interstate Commerce Commission under fourth section applications. The traffic conditions within the United States with reference to this transcontinental movement are quite dissimilar to those existing in Canada. In January of this year, there was submitted to the President and Congress by Federal Co-ordinator Eastman and the Interstate Commerce Commission, a recommendation for restoration of the fourth section of the Act (the long and short haul provision) to the form in which it was prior to 1920. It may be pointed out that these low transcontinental rates, controlled by competitive conditions, are not the measure of rates between points not subject to the long and short haul clause. For example, while the rate is 75 cents from Seattle to Buffalo, 2,505 miles, also from Spokane, Wash.,

the rate to points in Minnesota and North Dakota, located on the Great Northern Railway, north of Berthold, N.D., Churches Ferry, N.D., Larimore, N.D., Grand Forks, N.D., Crookston, Minn., and Thief River Falls, Minn.; points in North Dakota located on Northern Pacific Railway, north of Grand Forks; and points in Minnesota located on Minneapolis, St. Paul and Sault Ste. Marie Railway, north of Thief River Falls, is 134 cents on inedible tallow in tank cars for distances not in excess of 1,000 miles. In 69 I.C.C., 256, the Commission prescribed a rate of 98 cents on this commodity from Denver, Col., to Chicago, Ill., 1,034 miles; in 161 I.C.C., 512, it prescribed rates on this commodity from El Paso, Tex., of 91 cents to Los Angeles, Cal., 814 miles, and 108 cents to San Francisco, 1,296 miles. However, this Board has repeatedly held that rates established within the United States are not the criteria of reasonable rates in Canada; that, under the Railway Act, the Board must find its criteria of the reasonableness of Canadian rates within Canada, (Volume 17, Board's Judgments, Orders and Rulings, p. 726 at p. 732.

Beyond merely citing the rates on linseed oil and fertilizer from Medicine Hat and Warfield respectively, no further evidence was given concerning these rates. It is not contended that the commodities mentioned in any way compete with each other and it does not follow that, merely because the rates are different, there exists either unreasonableness or unjust discrimination with respect to the rate complained of. With regard to practically every article that is accorded special commodity rates, a different set of circumstances and conditions prevails; one case can seldom be an exact precedent for another; each traffic situation presents points of difference and the particular facts, circumstances and conditions existing in each case must be considered and the rates established based thereon. No data are before us concerning the conditions with respect to the rates cited for comparison.

Statements were made by complainant which may be summarized as alleging that they are unjustly discriminated against by reason of these rate differences. It is the duty of the Board to determine, in the light of the particular facts and the various circumstances found to exist in each case, whether there is unjust discrimination within the provisions of the Railway Act. Citations from numerous judgments of the Board defining the considerations which have a bearing on this point and to be applied, in so far as they are applicable, to the facts developed in the case being dealt with, will be found in Volume 24, Board's Judgments, Orders and Rulings, p. 344 at p. 350 *et seq*.

Unfortunately, the record is very meagre and incomplete with regard to some of the contentions made under this heading. Some very general statements were made without any supporting evidence in proof thereof being furnished, so that they do not enable us to arrive at any definite conclusion with respect thereto. For example, complainant referred to rates from Montana and United States shippers there described as their competitors, and stated they were compelled to pay a freight rate twice as high, the latter statement requiring modification in view of what is shown below. Hamilton and Toronto were named as destination points. The through rate is made up of 75 cents, Montana to Buffalo, plus rate from the latter point to Hamilton of 15½ cents and to Toronto 18½ cents, or through rates of 90½ cents and 93½ cents respectively. The Eastern Canadian points to which complainant is actually shipping were not given. To Montreal, the Buffalo combination from Montana is 106½ cents. Inedible tallow from the United States is subject to an excise tax of 3 per cent, which, at a price of 4½ cents per pound as at date of hearing, amounts to 13½ cents per 100 pounds, or at the price prevailing on February 16, 16½ cents per 100 pounds. However, we have no evidence of shipments of inedible tallow from Montana points to Eastern Canada; the railways state there is no movement. What originates in that State may, or may not, be shipped to nearer soap-making points within the United States. The Canadian railways cannot

be charged with unjust discrimination with respect to international traffic unless it is found that the rate charged for the Canadian portion of the haul creates an undue preference. This is not alleged by complainant. The matter of discrepancies in Canadian rates, as compared with international rates, has been before the Board in many cases and it has been held that the existence of such rate differences does not constitute an unjust discrimination of the character forbidden by the Railway Act. In Volume 21, Board's Judgments, Orders and Rulings, p. 1, this matter is dealt with at considerable length and there are there summarized numerous cases where this question has been in issue.

Complainant stated there is a shortage of production of tallow in Canada, which necessitates bringing in tallow from the United States, and some figures concerning importations were given. Complainant further stated (p. 2457): "As the United States shipper has to pay less freight to reach the Eastern Canadian market, it enables him to take a less delivered price, which depresses the price there, and Alberta shippers have to accept that depressed price, less the higher freight rate," and then stated that rates from Alberta producing points to Eastern Canadian consuming points should be on a just and fair basis comparable to the rates in effect from other producing points. We were not, however, furnished with any data concerning the points of origin of inedible tallow brought into Canada from the United States and the rates paid. The Canadian producing points are where packing plants are located, quite a number of which are at the same point where soap is manufactured. We have no information whatever as to whether local supplies influence the price, or what factor is controlling in the fixation thereof. The price paid at United States consuming points may influence the Canadian price; we do not know.

By reason of geographical location with respect to reaching the Eastern Canadian market, complainant is, no doubt, at a disadvantage as compared with producing points which are relatively close to that market, and which, naturally, creates a rate difference, but, plainly, this, in itself, does not show the existence of either unjust discrimination or unreasonableness in the rate paid by complainant, nor has the Board power to establish rates from Alberta solely to annihilate complainant's disadvantage in geographical location of several hundred miles (Volume 24, Board's Judgments, Orders and Rulings, p. 344 at p. 357). In submitting merely these very general statements, unsupported by any evidence as to what actually controls the price paid at any given point and without any data as to the actual points of shipment and the rates paid, clearly, complainant has failed to indicate, much less prove, that there is unjust discrimination in the rates on inedible tallow.

With regard to fish oil, complainant stated this is in direct competition with tallow in the Eastern Canadian consuming market, and contended the 65 cent rate from Vancouver lowers the value of tallow as compared with fish oil, consequently, there is an unjust rate discrimination. This is all the information furnished by complainant and it is very scanty. Why is rate discrimnation only now being alleged, while a 75 cent rate on fish oil from Vancouver was established over thirteen years ago?

From reports of the Interstate Commerce Commission and information in the Board's files, the situation appears to be that fish oil is used extensively in the manufacture of paint and varnish and by other industries such as tanneries and manufacturers of poultry feed, as well as for soap-making. There is a variety of soap oils, such as cocoanut, rapeseed, palm, sesame seed, red, fish, sea animal, etc. In soap-making, fish oil and tallow have individual qualities and are not equally suitable for all purposes, or, in other words, one may not, generally speaking, be substituted for the other. To maintain soap brands at a certain standard, a percentage of each commodity is required.

The rate on fish oil from the British Columbia coast was established to meet competition from two sources. Water lines had quoted a rate of approxi-

mately 35 cents from British Columbia coast points in lots of 600 to 1,000 tons. The Consolidated Whaling Corporation, Victoria, B.C., shipped approximately 3,000 tons to the Atlantic seaboard by water in 1933. The railways were enabled to obtain this traffic for movement at higher rates by rail on account of storage, handling and wharfage charges which are incurred in the water movement and because rail movement also provides better facilities for more regular shipments. Fish oil from Pacific coast points is also in competition with fish oil originating in Newfoundland and Atlantic coast territory. Tank vessels, ex-Newfoundland, discharged large quantities at Toronto and Hamilton in 1934.

From the foregoing, it is plain that, if the railways had not established a competitive rate from Vancouver, the same, or lower, rate would still be available by other unregulated transportation agencies and from other sources of supply. In the absence of publication of the rate by the railways, the complainant would have no grounds upon which to approach the Board alleging an unjust rate discrimination, but their position would be in no way different from what it is to-day. The rate established by the railways is not shown to have subjected complainant to any detriment that did not exist prior to its publication. Then, there is also the question whether the commodities compared do, in fact, compete with each other, as already referred to herein.

Amongst other things, the Board has stated that one test of unjust discrimination is " whether the locality alleged to be favoured actually gets into a common market on a lower rate " (*re* Telegraph Tolls, 20 C.R.C., 23). Applying that principle here, it is not shown that the competitive rail rate from Vancouver enables shippers there to reach a common market on a lower rate than existed before its establishment by unregulated transportation agencies; or that would be available in the absence of such competitive rail rate.

It has been stated:—

> " It has been said over and over again in the decisions of the Board as well as in the decisions of other regulative tribunals that the criteria of unjust discrimination are not to be found in abstract conditions. Unjust discrimination is not concerned with mere comparisons of mileage. It is concerned with the very tangible and concrete question: is there competition between the article which has a higher rate charge and the article which has a lower rate charge? If two articles of the same or identical nature are subjected to different rate treatment, then the rate is one factor which may render it difficult for the individual with the different rate or practice to do business in a common market; that is, the very material question is—' Is there actual competition in the same market between the parties affected? ' " 29 C.R.C., 227.

Unjust discrimination within the above cited principle has not been proven here. The mere assertion of unjust discrimination is of no value and complainant has furnished absolutely no affirmative evidence showing that the rates complained of have reacted to their detriment. What is stated in judgment of the Board in the case of T. H. Estabrooks, Company, Limited, Saint John, N.B., where the issue was confined to the question of detriment accruing to the applicant as a result of alleged unjust and discriminatory rates, is very pertinent here (Volume 20, Board's Judgments, Orders and Rulings, p. 180). Unjust discrimination with respect to these rates has not been established in this case.

Some figures were put in by complainant showing that from Calgary, for example, by a combination of the rate to the international boundary, the 75 cent rate thence to Buffalo, and the rate from Buffalo to Hamilton and Toronto, it produced a lower through rate than 150 cents. It is sufficient to state that the 75 cent rate is not published from the International boundary point to Buffalo; that, if it were, it would be inapplicable with respect to such a movement by reason of a specific provision in the tariff that the rates named therein will not

apply in combination with other rates to construct through rates from points in Canada to points in Canada.

There only remains for consideration the matter of the reasonableness of the rates per se. Upon careful consideration of this question, we have reached the conclusion that there should be a modification of the present rates and the railways will be directed to establish an inedible grease and inedible tallow in packages, in straight or mixed carloads, or in tank cars, in straight carloads; with minimum weights, when in packages, 60,000 pounds, in tank cars, actual weight but not less than 60,000 pounds, to Toronto, Montreal and points taking Groups A and B rates in Canadian Freight Association tariff No. 4-E, C.R.C. No. 107, the rates shown below in Column B, the present rates being shown in Column A. To stations in Eastern Canada on the Canadian National and Canadian Pacific Railways east and south of Montreal, add the difference between the 5th class rate to Montreal shown in Canadian Freight Association tariff No. 4-E, C.R.C. No. 107, and as shown to the desired station east or south thereof.

From	Column A.	Column B.
Battleford	141	117½
Brandon	108	90
Calgary	150	125
Camrose	147	122½
Edmonton	150	125
Lethbridge	144	120
Medicine Hat	138	115
Moose Jaw	129	107½
North Battleford	141	117½
Portage la Prairie	99½	84
Prince Albert	139	116½
Regina	124	104
Saskatoon	135	112½
Stettler	149	125
South Edmonton	150	125
Swift Current	137	115
Weyburn	122	102½
Winnipeg	93	77½
Yorkton	118	99

OTTAWA, ONTARIO,
February 22, 1935.

Complaint of Gainers, Limited, Edmonton, Alberta, against rates on inedible tallow from Edmonton and Alberta points to points in Eastern Canada.

F. 38601.

JUDGMENT

GARCEAU, Deputy Chief Commissioner:—(Dissenting.)

This is an application requesting that the freight rates from Edmonton or Calgary to the East, on inedible tallow, be reduced from $1.50 to 75 cents per 100 pounds.

The applicants made the following submission:—

We hereby submit our case for a lower rate on inedible tallow from Edmonton to Eastern Canada.

(1) The Railways charge Vancouver shippers a rate of 94 cents for hauling a car of tallow 2,800 miles. For pulling a car from Edmonton, a distance of 2,000 miles, we are compelled to pay $1.50, or on a 60,000 carload we have to pay $334 more dollars freight. In other words, receive $334 less in Alberta, an agricultural province, than British Columbia

shippers of the same commodity. This we contend is not reasonable or fair. Alberta is primarily an agricultural Province, and inedible tallow is one of the principal by-products of its greatest industry. The distance from Edmonton is 38 per cent less than from British Columbia, yet the rate is 59 per cent higher.

(2) Fish oil is a commodity that is in direct competition with tallow that we ship from Edmonton. It is furthermore shipped to the very same consuming market as our tallow. A 65 cent rate from Vancouver to Eastern Canada on fish oil compared with $1.50 rate on inedible tallow from Edmonton represents a very high percentage of the actual price obtained by shippers. The difference *in freight rate alone* in favour of the British Columbia Fish Oil shippers is nearly 1 cent per pound. This is about 40 per cent or about half, of the price we get at Edmonton because the F.O.B. destination price on inedible tallow and grease is between 3¾ cents and 4½ cents delivered in Eastern Canada. This rate situation has the effect of lowering the value of tallow as compared with fish oil, which in turn reflects back to the agricultural welfare of Alberta.

(3) It may be quite true that the Canadian railways cannot prevent the American railways from publishing low rates. However, although the United States lines publish a 75 cent rate from the United States Pacific coast points to Buffalo, they do not exceed the rate from the next interior state, Montana, or Spokane, Washington. In other words, the United States railways consider a 75 cent rate is a just and reasonable rate to charge from Montana or Spokane to Buffalo. A glance at a map will show the Board that the distance from Montana or Spokane to Buffalo is practically the same as from Alberta to Ontario. Yet we are compelled to pay a freight rate *twice as high.* Does it cost the Canadian railways twice as much as the United States lines to haul a car the same distance? Do the railways in Canada consider they are charging a reasonable and fair rate when they charge their customers, Alberta Shippers, double the freight rate that their competitor shippers in the United States have to pay? Furthermore, when a car moves from Alberta to Eastern Canada it is handled by one railway, either the C.P.R. or the Canadian National Railway. That is, one railway secures the entire revenue. In the case of a car moving from Washington or Montana under the 75 cent rate, the United States lines have to split this rate several ways, as no one railway runs from Montana to Buffalo. In spite of this, the United States lines still consider a through rate of 75 cents is just and reasonable.

(4) There is no duty on inedible tallow, grease, or fat used for the manufacture of soap, imported into Canada from the United States, as per Item 280 Canadian Customs Tariff. This means that we are in direct competition with all producing points in the United States as well as Canada. We are forced to pay the highest freight in Canada to our consuming market, Eastern Canada. We feel confident in saying that there is no other producing point in the United States that is burdened with a freight rate anywhere nearly as high as we are compelled to pay from Edmonton. What does this mean? It means that every shipping point in Canada, whether it is a greater distance from Eastern market or not, and every producing point in the United States, is able to actually receive a higher price for tallow and grease than we in Alberta. We process the raw agricultural products of the Alberta farmer, and having to sell the natural by-products in markets at the same price as those shippers who only have to pay half the freight rate we do, means that we, and the farmer, are forced to accept a lower price, which of course affects the welfare of the whole agricultural community of Alberta.

(5) Although the 5th class rate is $1.98 to Eastern Canada from Edmonton, and the commodity rate now in effect on tallow is $1.50, 78 per cent of the 5th class rate, the same tariff that quotes $1.98 from Edmonton, quotes 5th class rate from Vancouver to Eastern Canada of $2.42. But the Vancouver commodity rate is only 94 cents. In other words, their commodity rate is only 39 per cent of the 5th class rate. On the same basis, the rate from Edmonton would be 60 cents.

(6) There is also a rate of $1.00 per 100-lbs. on linseed oil from Medicine Hat to Toronto. Linseed oil also takes the 5th class rate, and is higher in price. Why should tallow have to stand a 50 per cent higher rate?

(7) The price of tallow, it is true, has gone up to some extent, but it is still far below the price that existed when the $1.50 rate was first established. The price of tallow then was around 10 cents per pound, which means the freight rate only represented about 15 per cent of the price.

In 1932, when the price was extremely low, about 2½ cents delivered in Eastern Canada, and it was not worth recovering, the railways kindly came to our rescue and reduced the rate to $1.00. However, the rate has been restored to $1.50 but the price of tallow is still comparatively low, being now about 4 cents delivered. This means the freight represents about 50 per cent of the price we receive at Edmonton, viz. 2½ cents.

(8) It may be of interest to you to know that it does not pay us to recover certain grades of tallow and grease because the cost of shipping prohibits them being moved to the Eastern market. No doubt there are other shippers in Western Canada situated in the same position. Would it not be actually to the advantage of the railways to lower the rate and encourage a greater number of cars of this class of material to be shipped to Eastern Canada from Alberta. The Canadian Railways receive the entire haul from Western Prairies to Eastern Canada. This would reflect itself in time on the whole agricultural industry.

(9) The Railways state that the rates from B.C. Coast points and Montana points were established under entirely dissimilar circumstances than Alberta. This is quite true. The Railways use one tariff from Vancouver and another from Alberta charging about twice as much. There is justification for comparison when one part of Canada is penalized and another section given a big advantage. We shippers in Canada are competing with other shippers in Canada and when we have to pay a considerably higher freight rate than those other parts, it naturally means the railways are causing us to be seriously discriminated against when the difference in freight is such an important percentage of the price.

The Railways contend that the freight rate on fish oil of 65 cents was necessary to place consignees in Eastern Canada on a parity with those similarly located in the eastern United States. The Railways take very great pains to assist Eastern Canadian consumers to be on equal competitive basis with Eastern United States consumers, *but they positively ignore the Western Canada shipper's plea to be on a parity with B.C. shippers or United States shippers.* Does this show discrimination or not?

(10) There is a shortage of production of tallow in Canada which necessitates bringing in tallow from the United States. We have information furnished by the Customs Department of the Bureau of Statistics for Canada, that there were 197,769 hundredweight of grease, rough, the refuse of animal fat, for the manufacture of soap and oils only, imported into the province of Ontario during the year 1933. This is

equal to 330 carloads of 60,000 pounds each. We have been informed by a railway official that there has been a surplus of tallow in Canada. These importations no doubt created that surplus of tallow to which he refers, and they have the effect of reducing the price of tallow which the western Packer receives.

As the United States shipper has to pay less freight to reach the Eastern Canadian market, it enables him to take a less delivered price, which depresses the price there, and Alberta shippers have to accept that depressed price, less the higher freight rate.

We are not asking any favours or concessions. What we are demanding, however, is what we believe is only just and logical. That we be given freight rates from Alberta producing points to Eastern Canadian consuming points that are on a fair and just basis comparable to rates in effect from other producing points to that same market. The present freight rate structure is terribly distorted, with the result that we are placed at a very unfair disadvantage with other producing points. The disparity is so great on such a low priced commodity that it can spell "Profit or Loss."

The Railways should realize that if the agricultural industry of Alberta can be helped to market its product with an equal chance with other producing areas it will have an effect of helping Western development. They should realize that whether Alberta ships to the B.C. Coast or to Eastern Canada, the haul is 100 per cent on the railways. It is surely up to the railways to see that Alberta gets the opportunity of being able to meet competition by being provided with reasonable rates. A rate of 75 cents would, in our opinion, be reasonable."

The rate of 94 cents per 100 pounds on inedible oil or tallow from Vancouver to the Eastern Provinces was cancelled after this application was made on December 12th, 1934.

The essential facts mentioned in the above quoted submission were not contradicted by the railways and must be considered proven. These facts establish that the producers and shippers of Alberta are handicapped by the existing freight rates to compete with producers from British Columbia, the United States or Eastern Canada, in the markets of Quebec and Ontario.

The railways filed a justificatory plea which reads as follows:—

"Referring to your letter of the 17th instant, and to complaint made to the Board by Gainers, Limited, Edmonton, Alta., under date of September 19th last, with respect to rate on inedible tallow, carloads, from points in Western Canada to destinations in Eastern Canada.

The present rate from Edmonton, Alta., to Toronto and Hamilton, Ont., and other points in Eastern Canada, is $1.50 per 100 pounds, as per item 120, Agent F. W. Thompson's tariff No. 103-L, C.R.C. 209. This rate is based on 75 per cent of the regular fifth class rate. The rates from other shipping points in Alberta are made upon the same basis. Rates from other producing points in Saskatchewan and Manitoba are on a relatively higher basis, being 80 per cent and 85 per cent respectively of the regular fifth class rate.

The complainant does not contend that the rate from Edmonton is unreasonable when compared with rates from other producing points in the Prairie provinces, but alleges that owing to existing rates from British Columbia coast points and points in the State of Montana, the Alberta producer is unjustly discriminated against. The rates from British Columbia coast points and points in Montana were established under entirely dissimilar circumstances than those governing in the Province of Alberta and there is no justification for the rate comparison

made by the complainant in an attempt to substantiate the allegation of unjust discrimination.

The rate of 94 cents per 100 pounds on inedible tallow from British Columbia coast terminals to Eastern Canada, item 550, Agent F. W. Thompson's tariff No. 101-E, C.R.C. 206, was published to meet the combination rate available via Buffalo, N.Y., to Hamilton, Ont., the factors being 75 cents per 100 pounds Vancouver, B.C., to Buffalo, N.Y., Agent H. G. Toll's Tariff 2 Series, and 19 cents per 100 pounds Buffalo, N.Y., to Hamilton, Ont., fifth class, Agent B. T. Jones' Tariff No. 260-A, C.R.C. No. 843. The current combination, however, is 90½ cents per 100 pounds, Agent B. T. Jones' Exceptions to Official Classification Tariff No. 130-W, C.R.C., No. 1308, under item 4180-A, authorized sixth class rate of 15½ cents per 100 pounds from Buffalo, N.Y., to Hamilton, Ont., still being 75 cents per 100 pounds as per item 2790-A, Agent H. G. Toll's Tariff No. 2-D, C.R.C. No. 632.

In order to hold any of the traffic to their lines the Canadian railways were obliged to meet this competitive situation existing between the British Columbia coast and points in the East. The making of competitive rates from British Columbia coast points to destinations in Eastern Canada to meet water competition via the Panama Canal has been repeatedly upheld by the Board. Rates from British Columbia coast points cannot, therefore, be used as a yard stick in making rates from interior shipping points in Canada to points in Eastern Canada between which the same competitive conditions are non-existent.

The rate on fish oil and whale oil of 65 cents per 100 pounds referred to by complainant from British Columbia coast points to certain specified destinations in Eastern Canada is provided in Item 320-B, Agent F. W. Thompson's Tariff 101-E, C.R.C. 206. This rate was necessary to place consignees in Eastern Canada on a parity with those similarly located in Eastern United States and to hold to rail lines tonnage which would otherwise move to Atlantic ports via the Panama canal.

The complainant referred to a rate of 90 cents per 100 pounds on tallow from Montana points to destinations in Eastern Canada such as Toronto and Hamilton, Ontario. There are no through rates published, but the same Buffalo combination is available from Montana shipping points as from Pacific Coast points, Item 2790, Agent H. G. Toll's Tariff No. 2-D, C.R.C. No. 632 being made applicable from Montana points to Buffalo, N.Y., by virtue of the application of Item 28-A of the same tariff. The officers of this Company are unaware of any movement of this product from Montana points to Eastern Canada. In any event, the packers in Western Canada are not in direct competition with those in Montana and the f.o.b. prices at destinations are not determined by the transportation cost from Montana or British Columbia.

Temporary reduced rates on inedible grease and tallow were published from shipping points in the Prairie Provinces to destinations in Eastern Canada in Agent F. W. Thompson's tariff No. 139 C.R.C. No. 135, effective August 2, 1932, expiring December 31, 1932, and republished in Agent F. W. Thompson's tariff No. 139-A C.R.C. 153, effective February 6, 1933, expiring December 31, 1933, representing a reduction of 33⅓ per cent in the then existing normal rates.

These sub-normal temporary rates were published upon representations made to the railways by the shippers that certain inedible tallow would have to be disposed of by the packers in Western Canada either by burning it or by throwing it down the sewer, and that it would be uneconomical to save this particular by-product for disposal in Eastern Canada, owing to surpluses available in that territory.

In view of this situation, the railways decided that unless a reduction was made in the specific commodity rates they would lose the haul from Western Canada. Market conditions in Eastern Canada had materially improved before the end of the year 1933, and the tendency was towards further improvement during the year 1934. Consequently, the sub-normal rates were not continued beyond the end of December, 1933. Although in this instance the railway companies adjusted their rates to meet the fluctuating prices, this concession was made for the sole purpose of assisting the producers in Western Canada. The Board has held on many occasions that carriers are not obliged to adjust their rates to meet market conditions and fluctuation in the prices of the commodities moved.

The rates which have been in effect since the beginning of 1934 have not proven a hindrance to the movement of the commodities in question, as considerable quantities of inedible tallow are being disposed of in Eastern Canada by the packers at Edmonton, Alta., as well as by those located at other shipping points in Western Canada. Any reduction in rates from Edmonton, Alta., would have to be made applicable from other shipping points, resulting in a loss of earnings which, under prevailing conditions, and for the reasons explained above, cannot be justified.

I submit that there is no justification for the complaint and that it should be dismissed."

In this case, facts and the principles involved differ with those of the application of the Fraser Valley Farmers Co-operative Association, of Fraser Valley, B.C., for a reduction in the rates on grains and mill feed for domestic consumption and, therefore, the judgment in that case cannot be accepted as disposing of the present issue, for as it has been properly stated by the Board in the Consumers Glass Co. Ltd. vs. Canadian Freight Association, Vol. 38, C.R.C. p. 89: "It is the duty of the Board to determine on the facts and circumstances developed in each individual complaint whether or not unjust discrimination does exist, and if it does, this condition must be remedied."

This statement is a truism: it indicates the relative value of precedents when based on facts, existing conditions or circumstances.

The railways were built or heavily subsidized by public moneys "to facilitate the interchange of commodities between the various provinces of the Dominion as well as the encouragement of industry, agriculture and the development of export trade."

In this special instance, the Board has to decide whether justice to producers, public weal, require the reduction of the rates reproached. Has the Board the power and function to decide such issue? Subsection 5 of section 325 says:—

"Notwithstanding the provisions of section three, the powers given to the Board under this Act to *fix, determine* and *enforce* just and reasonable rates, and to *change* and *alter* rates as changing conditions or cost of transportation may from time to time require, shall not be limited or in any manner affected by the provisions of any Act of the Parliament of Canada . . . ."

This legal disposition is explicit, formal: the Board may *fix, determine* and *enforce* just and reasonable rates, change and alter rates as changing conditions or cost of transportation may from time to time require: where are the sections of the Act which limit such powers?

Section 314 (5) reads as follows:—

"The Board shall not approve or allow any toll, which for the like description of goods, or for passengers carried under substantially similar circumstances and conditions, in the same direction, over the same line or route, is greater for a shorter than for a longer distance, within

which such shorter distance is included, unless the Board is satisfied that, owing to competition, it is expedient to allow such toll."

Bearing in mind the fundamental principles which ought to rule any human institution and the formal legal dispositions of the Railway Act, let us consider the facts of this case:—

The railways had established a freight rate of 94 cents per 100 pounds from Vancouver to Eastern Canadian markets to meet the combination rate available via Buffalo, N.Y., to Hamilton or Toronto, Ont., which is 90½ cents, as mentioned in their submission. This freight rate has been cancelled now, since December, 1934, after the filing of the submission.

The American freight rate on this commodity from Washington, Montana, to Hamilton or Toronto, Ontario, is 90½ cents.

The existing freight rate on fish oil, a like commodity, carried in like cars, sold to the same consumers, is 65 cents from Vancouver to Eastern Canada.

This rate was enacted "to place consignees in Eastern Canada on a parity with those similarly located in Eastern United States and to hold to rail lines tonnage which would otherwise move to Atlantic ports via the Panama Canal (Railways' contention).

The railways last year carried 117 cars of this product to Eastern Canada.

In 1933, 330 cars of inedible oil were sold by Americans to Eastern Canadian markets, 158 during the first six months of 1934. No record was filed for the remaining months.

On application of the Western packers, the railways in 1932 and up to December 1933, reduced the $1.50 rate from Edmonton or Calgary to $1, on account of the very low price being obtained for this commodity, viz. 2½ cents a pound f.o.b. destination.

This selling price at destination is satisfactorily established by the Applicants to be from 3½ to 4⅞ cents.

The railways' justificatory plea *is an admission of the facts alleged by the complainants.* Moreover, together with the authorities quoted, it summarizes all their arguments.

The complainants are right when they contend:— (Evidence, p. 2453).

> "We process the raw agricultural products of the Alberta farmers, and having to sell the natural by-products in markets at the same price as those shippers who only have to pay half the freight rate we pay, means that we, and the farmer, are forced to accept a lower price, which of course affects the welfare of the whole agricultural community of Alberta."

In fact, the American tariff enables the Washington or Montana shipper to send his product to the Canadian markets for 90½ cents per 100 pounds, while the Alberta shipper has to pay $1.50 per 100 pounds, whereas the selling price of this commodity is only 3½ cents to 4⅞ cents per pound f.o.b. destination. The freight rate on fish oil, a similar commodity, and a substitute, is only 65 cents from Vancouver to the Eastern Canadian markets.

It is readily apparent therefore in what a disadvantageous position this situation places the Alberta shipper.

The railways, when they published the 65-cent rate on fish oil from Vancouver to the Eastern Canadian markets, increased the competition which already affected the Alberta shipper owing to the American rates.

Fish oil already had an outlet on American markets via the Panama canal. The railways' submission stated:

> "This rate was necessary to place consignees in Eastern Canada *on a parity with those similarly located in Eastern United States* and to

hold to rail lines tonnage which would otherwise move to Atlantic ports via the Panama Canal."

They published that rate to take traffic away from water competitors and we may conclude that it was found advantageous to carry this product at the reduced rate of $260 per car because, while the Edmonton shipper must send minimum carloads of 60,000 pounds each, the Vancouver shipper of fish oil is allowed minimum carloads of 40,000 pounds.

It was not shown that it is in the public interest to divert certain commodities from the export trade and cause a depreciation in price on the home market. It is certainly not in the interest of the Canadian producer, the farmer and manufacturer.

The American tariff is fairer: the Washington shipper pays as much as the Montana shipper, to Buffalo, viz., 75 cents.

When the railway companies, in their own interest, decided to induce competition between the British Columbia shippers and those of Alberta, they should at least have provided the latter with advantages equal to those of the former, because they should favour the Alberta trade as much as that of British Columbia and because, in this instance, their own profit would have been greater: instead of receiving only $260 per carload, they would have had $390, the difference in distance amply compensating the difference in weight.

According to equity, the complainants are right when they contend that there is an undue preference to which the Board should remedy if it has authority to do so.

The railway companies denied this jurisdiction of the Board and attempted to justify their action by quoting several judgments; but the decisions cited were rendered under different circumstances and on different facts. These various quotations rather establish what does not constitute an undue preference; but an "undue preference" is defined in the Stamford Junction case—quoted in Vol. 17, C.R.C., p. 148 in commenting on section 317:—

> "It is not in the nature of things possible to secure anything like absolute equality of treatment to all persons who use the railways, or even like treatment to all who are using the same railway. The general public have theoretically a right to complain if the people in one or more sections of the country served by a particular railway are given a better service than the people of other sections; but with every desire on the part of the railway company to accord equality, fair treatment to all patrons over its entire system, circumstances and conditions are too controlling, oftentimes, to be resisted or overcome.
>
> "I know of no case where the exact question has been determined, but am of the opinion that, having regard to the admitted object for which the section must have been enacted, *that is to secure, in as far as practicable, equality of treatment, that any practice the direct result of which would be to favour one shipper as against another, would constitute an undue or unreasonable preference or advantage*, and be within the meaning of the Act; in other words, that the effect of the section is to remove, in so far as practicable, the possibility of different treatment of shippers or any particular description of traffic as against another, recognizing the fact that absolute equality, either in so far as treatment on the one hand or facilities on the other is concerned would be impracticable."

In the case of Toronto and Brampton v. G.T.R. and C.P.R. Cos., Mr. Justice Mabee stated (reported in Vol. 17, C.R.C. p. 153):—

> "I do not understand that there is anything wrong or evil in discrimination, so long as it does not hurt anybody. *The evil of it*, as I understand it, *is that because persons or localities are discriminated against, it results in unfair play or injury to the individuals or to the localities*

affected. In the absence of any injury to individuals or localities what difference does it make whether there is discrimination? The Railway Act, as I understand it, authorizes and justifies discrimination. It is only an undue, unfair, or unjust discrimination that the law is aimed against."

In the case of Calgary Live Stock Exchange vs. C.N.R. and C.P.R. Cos., 29 C.R.C. 227, Assistant Chief Commissioner McLean said:—

"It has been said over and over again in the decisions of the Board as well as in the decisions of other regulative tribunals that the criteria of unjust discrimination are not to be found in abstract conditions. Unjust discrimination is not concerned with mere comparisons of mileage. *It is concerned with the very tangible and concrete question; is there competition between the article which has a higher rate charge and the article which has a lower rate charge? If two articles of the same or identical nature are subjected to different rate treatment, then the rate is one factor which may render it difficult for the individual with the different rate or practice to do business in a common market; that is, the very material question is—'Is there actual competition in the same market between the parties affected?'*"

There is competition in this instance: fish oil producers shipped 117 cars to the same buyers who bought inedible tallow.

The statutes are the only bounds to the Board's discretionary powers to decide on the facts in each case and on what constitutes unjust discrimination in view of conditions, circumstances and consequences.

At page 2499 of the evidence, the following quotation appears:—

"The Board has also held that it is in the discretion of the railway whether it shall or shall not make rates to meet the competition of markets. The same principle applies here as in the case of water competition."

When this authority was cited, the railways overlooked the Board's decision directing them to publish "export rates" on wheat.

The interest of the public is the supreme law which limits the discretion of the railways; and "the 'public' whose interests are to be considered, is not the general body politic, or the interests of shippers over the country as a whole; the public intended is the public of the locality or district affected, and any considerable slice of the population in general as opposed to an individual or association of individuals will satisfy the description."—(Vol. 17 C.R.C. p. 150.)

In this case, the farmers, packers, their employees, who are unjustly discriminated against, are the public to be protected.

The Board has authority to do so; the criterion which must guide its decision is embodied in Section 320 of the Act, which says:—

"In deciding whether a lower toll, or difference in treatment, does or does not amount to an undue preference or an unjust discrimination, the Board may consider whether such lower toll, or difference in treatment, is necessary for the purpose of securing, *in the interests of the public,* the traffic in respect of which it is made, and whether such object cannot be attained without unduly reducing the higher tolls."

This principle was sanctioned in a recent judgment of the Board regarding rates on Anthracite Coal from Pennsylvania points to stations on the Canadian National Railways contiguous to Toronto, dated January 23, 1935:—

"Undoubtedly such action was necessary if the dealers at these rail delivery points are to be permitted to continue in business there and the railways to continue securing movement of coal by rail, *but, if the establishment of such rates creates an unjust discrimination against the dealers taking rail delivery at the points contiguous to Toronto*—and I consider the record shows this to be the case—then some modification of the rates of these contiguous points is required."

In a previous judgment, re: Telegraph Tolls, 20 C.R.C. p. 23, it is stated:—

> "The ultimate test of discrimination is to be found, not in a difference of rates, but in the question whether as a result of this difference an injury is worked to an individual or locality. One test of this is *whether the locality alleged to be favoured actually gets into a common market on a lower rate.* The rate paid rather than the distance travelled is important."

The fish oil gets into a common market on a lower rate than inedible oil, a like product or substitute: fish oil at the rate of 65 cents, from Vancouver, a distance of 2,885 miles, while for inedible oil the freight rate from Calgary, a distance of 2,248 miles, is $1.50, and from Edmonton, a distance of 2,159 miles, also $1.50.

A more glaring case of unjust discrimination cannot exist in relation to the definitions of the Board, above quoted, especially if we take into consideration the fact that fish oil is diverted from the American market to compete with inedible tallow on the Canadian market already supplied with American inedible tallow which, owing to a rate of 90½ cents can be brought from any distance on better conditions than the tallow from Alberta.

I will add; even if there were no unjust discrimination, in the actual circumstances, the Board would be justified to impose on the railways a tariff which would permit the Alberta producer to compete on Canadian markets with the American producer, i.e., 90½ cents per hundred pounds. Public weal would justify such a decision.

The majority judgment subordinates the right of Alberta producers to receive the same treatment as British Columbia shippers, to the railways' legal authority of issuing competitive tariffs; it ignores that this authority of the railways is always subordinate to justice, public weal (sections 319 and 320 of the Railway Act).

Section 319 says:—

> "*Whenever* it is shown that any railway company charges one person, company or class of persons, or the persons in any district, lower *tolls for the same or similar goods,* or lower tolls for the same or similar services, than it charges to other persons, companies, or classes of persons, or to the persons in another district, *or makes any difference in treatment in respect of such companies or persons,* the burden of proving that such lower toll or difference in treatment does not amount to an undue preference or an unjust discrimination, shall lie on the company."

It is said in the majority judgment that the Applicants have furnished absolutely no affirmative evidence showing that the rates complained of have reacted to their detriment.

According to section 319, above quoted, it was up to the railways to prove that the lower toll for the longer haul did not react against the complainants and, in my opinion, they have not done so.

The applicants submitted affirmative evidence and it is not contradicted: it must be considered admitted. At page 2451 of the Evidence, it is said:—

> "(2) Fish oil is a commodity that is in direct competition with tallow that we ship from Edmonton. It is furthermore shipped to the very same consuming market as our tallow. A 65-cent rate from Vancouver to Eastern Canada on fish oil compared with $1.50 rate on inedible tallow from Edmonton represents a very high percentage of the actual price obtained by shippers. The difference in the freight rate alone in favour of the British Columbia fish oil shippers is nearly 1 cent per pound. This is about 40 per cent, or about one-half of the price we get at Edmon-

ton, because the f.o.b. destination price on inedible tallow and grease is between $3\frac{3}{4}$ cents and $4\frac{1}{2}$ cents delivered in Eastern Canada. This rate situation has the effect of lowering the value of the tallow as compared with fish oil, which in turn reflects back to the agricultural welfare of Alberta."

I would direct the railways to publish rates on inedible grease and inedible tallow from Calgary and Edmonton, 25 per cent lower than shown in Agent Thompson's tariff No. 139, C.R.C. No. 135, which expired December 31, 1933, the toll for a shorter haul not to exceed the toll for a longer haul.

OTTAWA, February 5, 1935.

ORDER No. 51801

In the mater of the complaint of Gainers, Limited, of Edmonton South, Alberta, regarding the rate on inedible tallow in tank cars from Edmonton to Eastern Canadian points:

File No. 38601.

SATURDAY, the 9th day of March, A.D. 1935.

S. J. MCLEAN, *Asst. Chief Commissioner.*
HON. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Edmonton, November 12, 1934, in the presence of Counsel for and representatives of Gainers, Limited, and the Canadian Pacific and Canadian National Railway Companies, and what was alleged,—

It is ordered:

1. That the Canadian Pacific Railway Company and the Canadian National Railways be, and they are hereby, directed to establish on inedible grease and inedible tallow, in packages, in straight or mixed carloads, or in tank cars, in straight carloads,—with minimum weights, when in packages, 60,000 pounds, in tank cars, actual weight but not less than 60,000 pounds—to Toronto, Montreal, and points taking Groups A and B rates in Canadian Freight Association tariff No. 4-E, C.R.C. No. 107, the following rates, namely:—

From	*Rates in cents per 100 pounds Column B*
Battleford	$117\frac{1}{2}$
Brandon	90
Calgary	125
Camrose	$122\frac{1}{2}$
Edmonton	125
Lethbridge	120
Medicine Hat	115
Moose Jaw	$107\frac{1}{2}$
North Battleford	$117\frac{1}{2}$
Portage la Prairie	84
Prince Albert	$116\frac{1}{2}$
Regina	104
Saskatoon	$112\frac{1}{2}$
Stettler	125
South Edmonton	125
Swift Current	115
Weyburn	$102\frac{1}{2}$
Winnipeg	$77\frac{1}{2}$
Yorkton	99

2. That to stations in Eastern Canada, on the Canadian National and the Canadian Pacific Railways east and south of Montreal, there be added the difference between the 5th class rate to Montreal shown in Canadian Freight Association tariff No. 4-E, C.R.C. No. 107, and as shown to the desired station east or south thereof.

S. J. McLEAN,
Assistant Chief Commissioner.

Application of Mr. T. D. Agnew, Fenton, Sask., that the rate on grain via the Canadian National Railways from Senator to the head of the lakes be made the same as that from Fenton.

File No. 26860·4.

Complaint of the residents of the district surrounding Lintlaw and Nut Mountain, Sask, re alleged discrimination in rates on grain from Lintlaw and Nut Mountain as compared with rate from Kelvington, Sask., over line of the Canadian National Railways, to the head of the lakes.

File No. 26860·3.

JUDGMENT

By the Board:

1

Although the particular facts and circumstances in these two matters differ, when analysed, the same issues and principles are found to be applicable. Rates are stated in cents per 100 pounds.

2

Application of Mr. T. D. Agnew, Fenton, Sask., that the rate on grain via the Canadian National Railways from Senator to the head of the lakes be made the same as that from Fenton.

From Fenton and Senator on the Canadian National Railways, the prescribed rate, under the provisions of Board's General Order No. 448, dated August 26, 1927, on grain, carloads, to Fort William is 23 cents, which was the rate published from these points until September 13, 1932, when the railway established a competitive rate of 22 cents from Fenton. Senator is about three miles north of Fenton. South of Fenton, about 6 miles, is Hagen on the Canadian Pacific Railway, from which point the prescribed rate is 22 cents. The competitive rate was established by the Canadian National Railways to hold to its line grain originating south of Fenton which would be hauled to Hagen on the Canadian Pacific Railway under a rate difference. It is not shown that farmers located north of Fenton, or adjacent to Senator, have ever hauled grain to Hagen.

Applicant asks the Board to prescribe the same rate from Senator as the competitive rate established from Fenton, which is, in effect, asking that Senator be declared a competitive point when, in fact, it is not. Applicant refers to disadvantages in hauling grain to Fenton, because it involves crossing the South Saskatchewan river by ferry with delays at times and a hill to climb. In the winter, the river crossing may be made on the ice. The record indicates, however, that when there was no rate difference between Senator and Fenton, grain from the Senator district north of the river was nearly all hauled to and shipped from Fenton, so that considerations other than a rate difference appear to have been controlling—perhaps the presence of elevators at Fenton. There is, however, a loading platform at Senator, consequently adequate grain loading facilities. When the competitive rate was established from Fenton to hold to the

railway grain grown south thereof, obviously, the farmers north of Fenton shipping from that point obtained the benefit of the rate reduction and have the advantage of a lower rate because of the existence of competition south of Fenton. It was suggested by applicant that the present rate difference would prevent the building of elevators at Senator. It is stated that there is an elevator at Davis, the next point north of Senator, from which the same rate applies. Throughout the praires, elevators are to be found at points similarly located to those here under consideration and where there is a rate difference of one cent. However, the Board has no power to reduce rates solely to encourage the building of elevators.

3

Complaint of the residents of the district surrounding Lintlaw and Nut Mountain, Sask., re alleged discrimination in rates on grain from Lintlaw and Nut Mountain as compared with rate from Kelvington, Sask., over line of the Canadian National Railways, to the head of the lakes.

In addition to the petition of the residents of the district surrounding Lintlaw and Nut Mountain filed by the Saskatchewan Co-operative Wheat Producers, Limited, submissions were received from various elevator companies and grain dealers and the Rural Municipality of Sasman No. 336, Kuroki, Sask. It is alleged that Lintlaw and Nut Mountain are unjustly discriminated against in connection with the rates on grain, carloads, to Fort William. Lintlaw, Nut Mountain and Kelvington are on the Preeceville Subdivision of the Canadian National Railways. The distances and rates to Fort William are:—

From	Miles	Rate
Lintlaw	792	21
Nut Mountain	799	21
Kelvington	806	20

Kelvington is west of Lintlaw and Nut Mountain and the terminus of this subdivision. The rate authorized from all three points by the Board's General Order No. 448 is 21 cents, but, from Kelvington, a competitive rate of 20 cents was established by the Canadian National Railways to hold to its line grain originating west thereof which would be hauled to Fosston, Hendon or Rose Valley on the Canadian Pacific Railway, from which the prescribed rate is 20 cents. The competition was admitted by counsel for applicants.

Attention was directed to the rate from Clair, a main line point on the Canadian National Railways further distant from Fort William than Lintlaw or Nut Mountain. The authorized rate from Clair is 21 cents. The situation is, however, that a line of the Canadian Pacific Railway runs between Kelvington on the east and Clair on the west and both Clair and Kelvington are competitive with Hendon on the Canadian Pacific Railway, with the result that a competitive rate of 20 cents is published.

Counsel for applicants also referred to a 20 cent rate from Raymore, 796·1 miles from Fort William, and contended that that point cannot be said to be in competition with a point on another line of railway. The published tariff shows that the authorized rate of 21 cents was established from Raymore on September 12, 1927, in accordance with General Order No. 448, and remained in force until February 3, 1932, when a competitive rate of 20 cents was published. The railway stated that it found serious competition, although the Canadian Pacific Railway point is quite a distance away. It stated:—

> "There was a road which ran directly through Raymore north and south, and the farmers were coming within a very short distance of Raymore and trucking their grain north to the Canadian Pacific Railway and south to the Canadian Pacific Railway. We watched the thing for some time and found we were losing a lot of grain to the Canadian Pacific Railway in both directions, so that we reduced the rate from Raymore."

It was alleged that the farmers in the Lintlaw and Nut Mountain district are at a disadvantage as they are forced to pay an extra cent freight rate, or haul a much greater distance to a 20 cent point; that the merchants lose business by the farmers being attracted to more favourable rate points. The farmers do not pay an extra cent over the properly authorized rate, but, by reason of the authorized rate from a contiguous point on another line (or a competitive point) being 1 cent lower, they obtain the lower rate if they ship from the lower rated point. The record contains no data concerning the amount of grain that would ordinarily be shipped from Lintlaw and Nut Mountain, but diverted to other points solely by reason of the rate difference, and, obviously, accurate information of this character would be most difficult to obtain.

It is stated that some years ago one of the grain elevator companies undertook to absorb the 1 cent difference, compelling the other elevators to do likewise, and this was continued until less than a year ago; that, at present, the Saskatchewan Pool Elevators, operating at these points, have a petition from the farmers for a return of this condition. It was represented that, where rate differences exist, it places pressure upon the elevator companies, as they are constantly urged to absorb the rate difference or lose business. It would seem apparent that this situation probably exists throughout the prairies as between rate breaking points which are close to each other and where the rate difference does not result from the establishment of competitive rates.

4

Conclusions

The situation described in these cases is a general one and not confined to these particular districts, see Volume 24, Board's Judgments, Orders and Rulings, page 190, dealing with application of the Midland and Pacific Grain Corporation, Limited, Calgary, Alta., Castor, Alta., Board of Trade, Munson, Alta., Board of Trade, *et al.* The circumstances there were, in some respects, dissimilar to those here described, but, in principle, there was involved the same issue.

The question may quite properly be asked: why, in some cases, the rate from a Canadian Pacific Railway point is 1 cent less than from a point on the Canadian National Railways a shorter distance to Fort William, an instance cited here being Algrove on the Canadian Pacific Railway, 814 miles, rate 20 cents, and Nut Mountain on the Canadian National Railways, 799 miles, rate 21 cents?

General Order No. 448 directed "that the rates on grain and flour from all points on Canadian Pacific branch lines, west of Fort William, to Fort William, Port Arthur and Westfort be equalized to the present Canadian Pacific main line basis of rates of equivalent mileage groupings." The situation is, therefore, that on the Canadian Pacific Railway, the rates from branch line points are the same as from main line points of corresponding distance. The rates from the Canadian Pacific Railway main line points are governed by the Crow's Nest Pass Agreement (subsection 5 of section 325 of the Railway Act).

The Canadian National Railways, by the same order, were directed to "adjust their rates on grain and flour to Fort William, Port Arthur, Westfort and Armstrong to the rates so put into effect by the Canadian Pacific Railway." In compliance with this direction, the railway established, from its main line points, the same rates as those put into effect in conformity with the order from points on the nearest parallel, or contiguous, main or branch lines of the Canadian Pacific Railway. From points on the branch lines, the railway established the same rates as from main line points for equivalent mileage.

Inasmuch as there is considerable variation, in many instances, in the mileage to Fort William as between a point on the Canadian Pacific Railway and the same, or a contiguous, point on the Canadian National Railways, it follows that

the rates established by the Canadian National Railways to adjust them to the rates put into effect by the Canadian Pacific Railway do not exactly conform to the mileage groupings of the Canadian Pacific Railway. If they did, it would have forced the Canadian Pacific Railway to establish many rates from branch lines lower than from main line points and, consequently, lower than specifically provided for from main line points by the Crow's Nest Pass Agreement and subsection 5 of section 325 of the Act. For example, to Fort William, the distances from some common points are, from Nokomis, via Canadian Pacific Railway, 846·9 miles, via Canadian National Railways, 819·4 miles; from Young, via Canadian Pacific Railway, 877·4 miles, via Canadian National Railways, 856·1 miles; from Wadena, via Canadian Pacific Railway, 775·2 miles, via Canadian National Railways, 798 miles; from Reford, via Canadian Pacific Railway, 1,007·3 miles, via Canadian National Railways, 997·2 miles; from Edmonton, via Canadian Pacific Railway, 1,267·6 miles, via Canadian National Railways, 1,227·3 miles. It is under these circumstances that some 1 cent rate differences exist. The difference in mileage groupings as between the two railways was the matter of an appeal taken to the Supreme Court of Canada by the Province of Alberta and dismissed, 38 C.R.C., p. 27.

The only departure from the mileage groupings is where competition makes it necessary for one line to meet the rates established by the other. Sections 314, 329 and 332 of the Railway Act, and regulations issued by the Board pursuant thereto, permit the publication of competitive rates which will not be subject to the long and short haul clause under the provisions of the Act. Section 317 provides that the Board may determine, as a question of fact, whether or not traffic is, or has been, carried under substantially similar circumstances and conditions, and whether there has, in any case, been unjust discrimination, or undue or unreasonable preference or advantage, or prejudice or disadvantage, within the meaning of the Act. With respect to the words "under substantially similar circumstances and conditions," the Board has held that the Act "leaves it open to consider, in reference to the making of charges, all circumstances and conditions that appear applicable, whether directly relating to the carriage or the service given by the railway company or not." (4 C.R.C. p. 268). The Board has held over and over again that the existence of competition creates a dissimilarity of circumstances and conditions justifying lower rates where the dissimilar circumstances created by such competition exist, and that this does not constitute unjust discrimination, or undue preference, of the character prohibited by the Railway Act.

With respect to grain hauled to Fort William or to Vancouver for export, the same mileage grouping governs the rates from prairie points of origin; that is to say, from a point on the Canadian National Railways, either 1,000 miles from Vancouver or the same distance from Fort William, the same rate applies. When the mileage limit of one group is reached, the next group takes a rate 1 cent higher. Speaking generally, the distances to a given destination, either Vancouver or Fort William, are comparatively short between the station with the longest mileage in one group and the station of shortest distance in the next group. There are numerous cases where the rail distance between the rate-breaking points is less than between the points named in the complaint of the residents of Lintlaw and Nut Mountain. There has to be a breaking point between the groups and these are at present governed by the grouping under the statutory rates of the Crow's Nest Pass Agreement. The Board has, in no case, directed any changes therein. If the Board were to direct exceptions here and there to rates established on a proper basis, it is not apparent where the line could be drawn and it would ultimately result in upsetting and disrupting the whole basis of these rates. To direct changes in rates to Fort William under circumstances such as set out herein might result in defeating the provisions of General Order No. 448, which were to equalize

the rates to Fort William and Vancouver; further, if such exceptions were directed and the breaking points between the present mileage groups changed, it would simply result in a similar situation to that here described being created elsewhere as between the new rate-breaking point and other stations contiguous thereto in the next group, resulting in further applications and complaints.

Regarding alleged loss of business by merchants through farmers hauling to lower rated points, the situation here is no different from that existing at rate-breaking points throughout the prairies. So far as the farmers themselves are concerned, the establishment of the competitive rate enables the farmers not within the competitive zone to obtain the benefit of a rate reduction if they haul to the competitive point and, consequently, is an advantage to them rather than a disadvantage.

For the reasons outlined, there is no unjust discrimination with respect to the rates in issue and the application of Mr. Agnew must be refused and the complaints of the residents of Lintlaw and Nut Mountain district dismissed.

OTTAWA, ONT., February 19, 1935.

Application of Mr. T. D. Agnew, Fenton, Sask., that the rate on grain via the Canadian National Railways from Senator to the head of the lakes be made the same as that from Fenton.

File No. 26860.4

JUDGMENT

GARCEAU, Deputy Chief Commissioner:—(dissenting.)

This is an application to have similar rates from Senator, Sask., as from Fenton, Sask., distant 2½ miles; also, for better loading facilities at Senator Siding.

The admission contained, in the railway's submission, dated October 9, 1934, coupled with the evidence received at the hearing, would justify, in my opinion, the granting of the application, so far as it concerns freight rates.

The railway's submission states:—

> "The statutory rate on grain from Fenton would be 23 cents per 100 pounds, the same as from Senator, but on September 13, 1932, we found it necessary to publish a competitive rate of 22 cents from Fenton in order to meet the rate of 22 cents in effect from Hagen on the Canadian Pacific Railway. This reduction was necessary to prevent the diversion of grain from points in the vicinity of Fenton to Hagen. The reduction, however, created no hardship in the Senator district for the reason that the growers in that district have in the past hauled virtually all their grain to Fenton, and a continuance of that practice would permit them to benefit by the reduced rate."

Mr. Agnew substantiated his application by the evidence at the hearing establishing the hardships, difficulties and losses of farmers using Fenton as their shipping point.

Moreover, recently, Senator has been favoured with many new settlers and, if facilities are given, development of new agricultural areas seems to be assured.

The railway even admits that a reduction of the freight rates, as requested, will mean the building of elevators at Senator and, on the whole, it is not preposterous to assume that the same rate from Senator as from Fenton would

mean greater traffic to the railway and great advantages to the farmers of the vicinity.

If we refer to the admissions of the railway that all grain originating from Senator and vicinity is shipped from Fenton, we may conclude that the granting of the application, as far as freight rates are concerned, would in no way cause prejudice to the railway, but would be greatly beneficial to the farmers and the development of an agricultural area.

The railway found it necessary to publish a rate of 22 cents from Fenton, in order to meet the rate of 22 cents in effect from Hagen on the Canadian Pacific Railway.

If we look through the submissions and evidence, we see that Senator received many of the farmers who were driven from southern Saskatchewan on account of drought, that they came to Senator with cattle, agricultural implements, in order to be able once more to earn a living. If any class of people deserve the help of public agencies, the new settlers of Senator are entitled to that help. Help can be given by the railways, which help would mean the building of an elevator, shipping facilities for farmers in absolute need of such facilities on account of the geographical difficulties they have to contend with: for weeks in spring and fall they have practically no access to Fenton Station, and having no shipping facilities at Senator, they cannot dispose of their crops in the most opportune time.

It is of public interest that this community be favoured with shipping facilities.

The railway admits that if the farmers enjoyed the freight rate given to Fenton, an elevator would be built at Senator supplying such shipping facilities.

The railways would not lose anything on account of the lower rate; on the contrary, would receive a greater freight tonnage.

I cannot accept the dictum of the judgment of the majority which says at page 2, "that the Board has no power to reduce rates solely to encourage the building of elevators." It is not a fair interpretation of the application which is "that equalization of rates with Fenton would mean the construction of necessary shipping facilities" and if the Board has no authority to reduce rates solely to encourage the building of elevators, it is an administrative body, "a body constituted by Parliament with full powers under statute to fix and control railway rates so as to permit of the freest possible interchange of commodities between the various provinces and territories of the Dominion and the expansion of its trade, both foreign and domestic, *having due regard to the needs of its agricultural and other basic industries.*"

Section 312 (*d*) directs the company to "furnish and use all proper appliances, accommodation and means necessary for receiving, loading, carrying, unloading and delivering such traffic."

Extending the same rate to Senator as enjoyed by Fenton would be advantageous to the farmers of that locality. It would mean no loss to the railways.

It must also be remembered that recovery is the national problem; that we are in a state of emergency; that every effort ought to be made to help recovery.

I am of the opinion that the Board, as an administrative body, ought to consider first the needs of the public, public weal, rather than previous decisions or a rate structure established when conditions were different and the economic and social structure was not threatened as it is to-day.

The old order has gone and it is no reflection on the wisdom of previous decisions to take into consideration another criterion in disposing of the present application.

If experts can ignore the existing dangerous economic and social conditions, the Board must take them into consideration.

The power of the railways to issue competitive rates is subject to the discretionary powers of the Board and the Board in rendering its decision must consider the interest of the public and "the 'public' whose interests are to be considered, is not the general body politic, or the interests of shippers over the country as a whole; *the public intended is the public of the locality or district affected*, and any considerable slice of the population in general as opposed to an individual or association of individuals will satisfy the description" (Vol. 17, C.R.C. p. 150).

The rules concerning cross country competition are very elastic and can include Senator. I would refer to case No. 26860·3, re: alleged discrimination in rates on grain from Lintlaw and Nut Mountain as compared with rates from Kelvington, Sask., over the line of the Canadian National Railways, to the head of the lakes. If Senator had highway facilities to Hagen on the Canadian Pacific Railway, distant 9 miles, it would, as Raymore, distant 20 miles, be considered a competitive point and given the same rate as Fenton, in accordance with the ruling in the case above referred to; being deprived of higway facilities, not only to Hagen but even to Fenton, its needs are ignored, discrimination is added to the plight of its inhabitants, which discrimination precludes the prospect of better conditions. I cannot approve such a policy.

Bearing in mind the fundamental principles which ought to rule any human institution: service, agricultural recovery as a national necessity, the powers given to the Board by the Railway Act, I would grant the application.

Ottawa, February 27, 1935.

Complaint of the residents of the district surrounding Lintlaw and Nut Mountain, Sask., re. alleged discrimination in rates on grain from Lintlaw and Nut Mountain as compared with rate from Kelvington, Sask., over line of the Canadian National Railways to the head of the lakes.

File No. 26860·3

JUDGMENT

Garceau, Deputy Chief Commissioner: (dissenting.)

This is an application of resident farmers and village residents of the vicinity of Nut Mountain and Lintlaw for a reduction in freight rates on grain from Nut Mountain and Lintlaw on through freight going east.

The submission of the applicants reads as follows:—

"The facts are:—

"That the rate charged from Nut Mountain and Lintlaw is 21 cents per one hundred pounds, while the rate from Kelvington, one station west of Nut Mountain, and therefore 7 miles farther from Fort William, is 20 cents per one hundred pounds and the rate from all stations east of Lintlaw in the same freight zone is 20 cents per one hundred pounds.

"At the same time the rate charged from the point of Clair, a point farther from Fort William than Lintlaw or Nut Mountain and points east of Clair on the main line on the Canadian National Railway as it runs from Canora to Humboldt is 20 cents per one hundred pounds.

"The mileage from Winnipeg to Canora is.. 302
and from Canora to Clair is.. 76

making a total mileage of.. 378
The mileage from Canora to Lintlaw via Sturgis is.. 56

or a total milage from Winnipeg of.. 358
while the mileage from Canora to Nut Mountain via Sturgis is.. .. 61

or a total mileage from Winnipeg of miles.. 363

"It is also to be noted that the freight rate on the branch of the Canadian Pacific Railway running from Yorkton through Wadena north to Nipawin has a rate of 20 cents per one hundred pounds to Algrove, which means that the stations on that line of Hendon, Fosston and Rose Valley are in competition with Kelvington, hence the reason why Kelvington is a 20 cent point.

"It of course might be argued that all points from Clair east of Invermay are competitive points inasmuch as they are in competition with the Canadian Pacific Railway Yorkton-Nipawin Branch, but if one looks at the Canadian National line running from Winnipeg through Melville to Saskatoon, it is to be noted that Raymore is still on the 20 cent rate and Raymore is 362 miles west of Winnipeg and cannot very well be said to be in competition with a point on another line of railroad. . . . . .

"On behalf of the above named parties, I therefore wish to submit:—

"(1) That the rate on freight from the above points to Fort William at the head of the lakes unjustly discriminates against such points inasmuch that the rate is lower from points on the same railway, but on a different branch thereof, although a greater distance from Fort William than the above points.

"(2) That the volume of business received by the railway from the above points is sufficient to warrant a more just rate.

"(3) That farmers and merchants at such points are put in an unfair and disadvantageous position by reason of the said rate. In the case of the farmers it causes them to either pay an extra cent per one hundred pounds or haul a much greater distance. In the case of the merchants, they lose business by the farmers being attracted to more favorable rate points.

"(4) That it places an unfair pressure upon the elevator companies at the above points inasmuch as they are being constantly urged to absorb the extra freight or lose business. (It is true that in so far as Saskatchewan Pool Elevators are concerned, they have an elevator at Kelvington as well as at Lintlaw and Nut Mountain, but farmers who prefer to deliver to that company's elevator at Nut Mountain do not necessarily deliver at the same company's elevator when hauling to Kelvington).

"(5) The topography of the country through which the line to Lintlaw and Nut Mountain runs as compared with that of the country through which the line runs to Clair and the line runs to Raymore is such that the cost of operation to the former points cannot be in excess of that to the latter. From previous decisions of your Board there would appear to be sound ground for contending that the above is discrimination within the meaning of subsections four and five of Section 314

of the Railway Act and in that connection I would refer you to the following cases:—

"Two Creeks Grain Assoc., vs. C.P.R., 18 C.R.C., 403.
"Levis Board of trade vs. C.N.R. 47 C.R.C. 119.
"Midland Lumber Shippers vs. G.T.P. 22 C.R.C. 387.
"Canada West Coal vs. C.P.R. and C.N.R., 27 C.R.C. 113.
"Salada Tea vs. Canadian Freight Association, 30 C.R.C. p. 153.

"I have not used the mileage from Fort William, because I commence at Winnipeg.

"Nut Mountain is 363 miles from Winnipeg, Lintlaw is 358, and Clair on the other line of the same railroad is 378 miles. One is under a 20 cent rate and the other is 21."

The railways made no other submission than to quote the case of the Midland and Pacific Grain Corporation for a reduction in grain rates, which was heard in Calgary on May 25 and June 1, 1934.

Although the railways rest their case on that decision, they submit that the facts on which that decision was based principally were not properly exposed to the Board or that the Board did not judge according to the facts or the practice of the railways.

When the Board said: "with respect to cross-country competition as distinguished from strictly competitive points served by both lines, the railways advise the mileage scale has not been departed from where the contiguous points are more than six miles apart"; it was stressed before the Board that the mileage scale had been departed from even when the distance was more than six miles between two supposed competitive points.

Raymore is at a distance of 18 miles from any other competitive point and was given a competitive rate of 20 cents by the railways.

Mr. Hately at page 2553 of the Evidence gives as reason for this 20 cent competitive rate from Raymore: "Because there was competition at these other points and it is within the discretion of the railways to meet competition or not to meet it."

I cannot accept that it is within the discretion of the railways to meet competition or not to meet it, when in meeting such competition they discriminate or give undue preference to a locality over another, or public interest demands equalization of rates.

The railways are entitled according to law to meet competition for their own benefit but not against the interest of the public of another locality. This is strictly prohibited by law (sections 319 and 320 of the Railway Act).

The decision of the Board in the case above mentioned was based on the fact that there was not a distance of more than six miles between the two cross-country competitive points: it has no application in the actual instance because the distance varies from 10 to 20 miles and even in the case of Raymore the railways acknowledged the weakness of their case for Mr. Hately says for the railways:—

"If, in the opinion of the Board, these stations are so far apart that we are not justified in meeting the competition at Raymore without publishing the same rate from Nut Mountain and Lintlaw, on account of the distance being similar, then I think the Board should give us an opportunity of giving consideration to raising the Raymore rate before ordering us to put down the Nut Mountain and Lintlaw rate, Raymore being the only point there seems to be any question about regarding competition."

If the factor of distance is to be considered, whether a point is competitive or not, as Mr. Hately seems ready to admit by the above excerpt from his

submission, none of the points mentioned by the railways would be competitive because Hendon is 19 miles from Kelvington by road, Fosston is 18 miles by road, and Rose Valley is 20 miles by road; but the applicants do not base their case upon Kelvington being a 20 cent point (see p. 2553 of Evidence): "We concede that it is a competitive point although it is 18 or 20 miles away, but in the case of Raymore you may as well say that this whole country is competitive, because Raymore is a very substantial distance away from a C.P.R. point."

I am of the opinion that the railways have utterly failed to establish their contention. None of the submissions of the Applicants have been denied and I believe that the authorities referred to apply, viz:—(Evidence p. 2554)

> "I have already referred to the case of the Canada West Coal v. C.P.R. and C.N.R., in which the question was that the C.P.R. from Lethbridge to C.P.R. charged more for the coal haul, although a shorter route, than the C.N.R. charged from Drumheller. Chief Commissioner Carvell said:—
>
> "'If the C.P.R. were handling coal from Drumheller at C.N.R. rate and charging a greater amount from Drumheller, a shorter distance, I think that would be a proper case for consideration by the Board on the ground of discrimination.'
>
> "In the case of the Midland Lumber Shippers v. Grand Trunk Pacific, 22 C.R.C. 387, the rate charged from Penetang, Ont., to Buffalo, a distance of 194·1 miles was 16·3 cents, while the rate charged from Midland, Ont., to Buffalo, a distance of 194·4 miles, was 19 cents. In that case the headnote says:—
>
> "'Held unjust discrimination, other things being equal, to charge a higher rate from one point of origin as compared with another at practically the same distance from the same point of destination.'
>
> "I submit that Raymore is the same distance from Winnipeg as Nut Mountain and Lintlaw, and that it is not a competitive point with any other line of railway and therefore it constitutes discrimination.
>
> "I have also referred to the case of the Two Creeks Grain Growers Association v. C.P.R., 18 C.R.C. 403. That was a case where the line branched off from Virden and ran through to Elkhorn. There was an application made to direct the C.P.R. to give the same freight rate between Winnipeg and Elkhorn on the one hand and Winnipeg and Two Creeks on the other. It was held it was discrimination against Two Creeks."

I will add that even if the authorities quoted by Applicants did not apply, the application ought to be granted for the following reasons:—

The Board, being " a body constituted by Parliament with full powers under statute to fix and control railway rates so as to permit of the freest possible interchange of commodities between the various provinces and territories of the Dominion and the expansion of its trade, both foreign and domestic, having due regard to the needs of its agricultural and other basic industries," it must consider the actual needs of the public rather than previous decisions or a rate structure established when conditions were different and the economic and social structure was not threatened as it is to-day.

Recovery is the national problem; it would solve or at least would help to solve the railway problem: lower cost of distribution would help recovery.

It is a poor policy to favour one locality at the expense of another. It is against the spirit of the law and against justice not to give equal opportunities to all communities when it is possible to do so.

In this instance, the shorter haul pays a higher freight rate than the longer haul. If past economic conditions could excuse such a treatment, or even if

to-day such a treatment can be justified on account of certain circumstances, in my opinion, it cannot be tolerated in this instance.

Equalization of freight rates should, as never before, be recognized to the fullest possible extent " as being the only means of dealing equitably with all parts of Canada and as being the method best calculated to facilitate the interchange of commodities," promote recovery.

The railways can carry grains from Kelvington to Eastern Canada at 20 cents per 100 pounds, they can do so from Lintlaw and Nut Mountain, a shorter distance, for the same price.

The railways being public carriers are obliged to do their utmost to further trade. I do not wish to minimize the services rendered by the railways, but their duty is to render even more service when possible.

On account of competition by other carriers, such as motor trucks, busses, they must, in their own interest, convince the public that they are better servants than their competitors. They must ignore their rights and remember only their obligations. I would say, that *owing to actual conditions,* any higher rate for the shorter haul on the same line would be unjust discrimination.

I will add that whenever a competitive rate is issued all municipalities enjoying the same rate previously should benefit of the lower rate, in order not to favour any community at the expense of another.

I base this statement on the ground that public weal would be better served and recovery better fostered.

I cannot agree with the report or memorandum of our Chief Traffic Officer, based on previous decisions or the rate structure of 1927.

Conditions have altered and the Board, as an agency of Government, in my opinion, must consider first public weal.

I would grant the application.

OTTAWA, February 27, 1935.

ORDER No. 51800

In the matter of the application of T. D. Agnew, of Fenton, Saskatchewan, that the rate on grain via the Canadian National Railways from Senator to the head of the lakes be made the same as that from Fenton;

And in the matter of the complaint of residents of the district surrounding Lintlaw and Nut Mountain, Saskatchewan, regarding alleged discrimination in rates on grain from Lintlaw and Nut Mountain as compared with the rate from Kelvington, Saskatchewan, over the line of the Canadian National Railways, to the head of the lakes.

Files Nos. 26860.4 and 26860.3

SATURDAY, the 9th day of March, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the matters at the sittings of the Board held in Regina, November 15, 1934, in the presence of Counsel for and representatives of the complainants and the Canadian National and Canadian Pacific Railway Companies, T. D. Agnew appearing in person, and what was alleged,—

It is ordered: That the application of the said T. D. Agnew be refused and the complaint of residents of Lintlaw and Nut Mountain district, Saskatchewan, dismissed.

S. J. McLEAN,
Assistant Chief Commissioner.

Application of the Arrow Lakes Lumber Company, Limited, Nakusp, B.C., for a reduction in rates on lumber from Nakusp to the Prairie Provinces and Ontario; and to Quebec and the Eastern Seaboard and New Westminster and Vancouver for export.

File No. 26901.63

JUDGMENT

By the Board:

The rates applied for and the grounds upon which the application is based are set out in applicant's letter dated June 15, 1934, reading:—

"We wish to make application for the restoration of 1916 rates on the movement of lumber from Nakusp to the prairie provinces of Canada, the establishment of a 60-cent rate to Ontario and 60-cent export rate to Quebec and eastern seaboard, also a 15½-cent export rate to New Westminster and Vancouver.

"In 1928 and 1929 three trains weekly came into the town of Nakusp and the outward movement of freight chiefly lumber and poles totalled 12 to 15 cars weekly during the shipping season. Present train service is one train every two weeks and since January 1, 1934, four cars of lumber only have been shipped in five months.

"The maintenance of the prevailing high level of freight rates from this district during the last few years in spite of lower commodity price levels has inflicted heavy losses on the lumber manufacturers whose only route to market is via the railway and the industry is in danger of being wiped out.

"Changes in marketing of Canadian products have opened up for some districts valuable export markets, particularly the British Columbia coast, Eastern Canada, Maritime Provinces and even northern Manitoba (via Churchill) through operation of trade agreements and subsidies from general revenues of the Dominion. Interior British Columbia producers have only limited chance of reaching these export markets and as a result are entitled to a greater share of the rail markets of the prairie provinces and Ontario, being only markets available to them.

"Prevailing rates will not permit this development at current price levels and as same will remain low for some time to come we make our application for rate reductions outlined."

The Canadian Pacific Railway (Nakusp being a local point on that line) filed its reply to the application on August 13, in which, amongst other things, it stated the present rates from Nakusp are on a relative basis to the rates from other lumber shipping points in the same territory, so that the rates from Nakusp could not be reduced without making a corresponding reduction from all other shipping points in British Columbia; that, under prevailing conditions, it is impossible to contemplate that any reduction in rates would have an appreciable effect on increased lumber production; that it would be inconsistent to single out lumber for preferred rate consideration under present marketing conditions which prevail with respect to all staple commodities, consequently, the existing lumber rates could not be reduced without giving similar treatment to the products of other industries and the vastly decreased revenues of the railways will not permit of any such action at the present time.

The applicant and the railway filed further written submissions in reply to each other and the matter was then put down for hearing at a sittings of the Board in Nelson on November 9, so that it could be fully developed.

It is clear that the grounds upon which this application is based have their origin in the conditions resulting from the adverse effects of the general depres-

sion which commenced in the latter part of 1929. Few branches of industry have escaped. Agriculture, generally, has probably been in a less favourable position than any other industry. The factors contributing to the inception and continuation of the depression are well known. They include monetary and credit conditions, dislocations of international trade, overproduction of many of the staple commodities, etc. Freight rates, if a contributing factor, are but one among many. Some industries have been affected in greater degree than others. In the lumber industry, amongst other things, the depression has reduced building and other lumber consuming operations to extremely low points and this, as well as the growing use of substitutes, has contributed to the present low production level and prices.

Applicant has also suffered from the imposition of extra duty and excise taxes since June, 1932, on lumber entering the United States, stating about 50 per cent of its Idaho white pine was shipped to that market, which is now virtually closed to it.

At the hearing, applicant stated he proposed to show how the existing rates are unreasonable and discriminatory and have an adverse effect on the business of those engaged in the lumber industry of that district. Arguments advanced by applicant on the record under this heading are analysed as follows:—

1

Applicant stated valuable export markets have opened up for mills on the British Columbia coast, in Eastern Canada and the Maritime Provinces, which the interior British Columbia mills have only a limited chance of reaching, and, as a result, the latter are entitled to a greater share of the rail markets of the prairie provinces and Ontario, and prevailing rates will not permit its development at current price levels.

If some producing districts, by reason of their location on the water, or in close proximity thereto, have certain advantages over interior producing districts in export markets, this, unfortunately, creates no grounds upon which the Board can direct reduction in rates solely to permit the interior British Columbia mills to reach domestic markets on a lower relative rate basis than other producing districts. There is not here involved the matter of differences between export and domestic rates; it is entirely a question of rates from all producing districts fairly related to each other. The interior British Columbia mills are entitled to rates to their domestic markets which are fairly related to the normal rates from other producing districts, but all producing districts are clearly entitled to an equitable rate relationship and, of course, demand it. This phase of applicant's argument is a plea for preferred rates, rather than showing the rates to be unreasonable or discriminatory. Obviously, a preferred rate basis could not be directed from one producing district and denied to the others, so that giving effect to applicant's contention would, in fact, create a rate basis that would be unreasonable and unjustly discriminatory. It would be just as logical and reasonable for the Alberta producers to ask for substantial reductions in rates from Alberta mills into British Columbia in order that they might endeavour to secure markets in British Columbia for a portion of their lumber. Alberta ships no lumber into British Columbia, although British Columbia ships into Alberta, in some years supplying a great deal more at destinations in that province than the Alberta mills.

2

It is alleged that the maintenance of the prevailing high level of freight rates is inequitable and unreasonable in view of the lower price level and has inflicted heavy loss on the lumber manufacturers whose only route to market is

via the railway; that the current rates are discriminatory from the fact that, under lower price levels, freight charges constitute a greater percentage of the cost; that the present rates are unreasonable because they are higher than the traffic can bear and, it is alleged, are eliminating from the markets of Canada an important district of production and supply contrary to public interest.

Summarized, the contention is that current rates are unreasonable because they are higher than the traffic can bear; that the present level of rates is unreasonable and discriminatory in view of the lower price levels, which constitute freight charges a greater percentage of the price of the commodity.

The applicant put forward very clearly the conditions and difficulties to which he was subjected and, if the matter could be dealt with from the standpoint of sympathy alone, the way would be easy. The following excerpt from judgment of the Assistant Chief Commissioner in connection with an application for a rate reduction on iron sulphur concentrate valued at not in excess of $4 per ton, is pertinent:—

> "In arguing for a reduced rate, the applicant, naturally, lays stress on the low value of his product. This is in harmony with a change in point of view which has taken place—a change which has not always been appreciated. There was a time not so long ago when any suggestion that a rate should be based on value, or, in other words, on what the traffic will bear, was objected to as being in the nature of a plea for extortion; and it was commonly argued that the proper basis for rail rates was cost of the service.
>
> "To enter into the ramifications of these two lines of thought would take one far afield, but it is to be noted that where formerly the shipper laid stress on cost and looked askance at "what the traffic will bear," the conditions have now changed and the common argument from the railway standpoint is one of cost, and an equally common argument from the standpoint of the shipper is what the traffic will bear."
>
> Board's Judgments and Orders, Vol. 15, page 15.

In the increases in rates which Canada, in common with other countries, has had to face, the advance in rates was not made at the same time as prices went up. A considerable period of time elapsed before the rates were raised and the justification for the increase was the increased cost of operation to which the railways were subjected. The general level of rates has been twice reduced from the peak, which was reached in 1920. On certain so-called basic commodities of low value, namely, forest products, building material, brick, cement, lime, and plaster, potatoes, fertilizers (other than chemicals), ores, pig-iron, blooms, billets, wire rods, and scrap iron, there was a third reduction, bringing the freight rate level on these basic commodities somewhat below the general level. Further, the increases allowed in Western Canada were not as great as authorized in Eastern Canada. The present situation is that, on forest products, the normal rates in Eastern Canada are now 17½ per cent, and, in Western Canada, 12½ per cent, over the rates in force prior to the 1920 increase.

Certain facts have to be recognized and faced. From the same causes underlying the conditions in the lumber industry, as well as other industries, the present rate level is not providing the railways with the earnings necessary to give them a fair return on their operations. They are very much worse off now than they were before the depression when operating on the present rate level. With diminished traffic, railway costs are to-day as great, and even higher, than they were when the commodity price level was much higher. Cost of transportation does not go up and down in step with commodity price levels. With the decline in commodity prices, the freight rate level is, of course, relatively higher than the commodity price level and, as a result, the value of the service to the shipper, when measured solely by the decline in commodity prices and by

the depressed condition of industry, has been lowered. However, while the value of commodities transported is one factor in determining reasonable rates, commodity prices alone are not controlling.

If the present rates on lumber are unreasonable and discriminatory because of the lower price level, then, by the same test, freight rates generally are unreasonable and discriminatory. If the Board directed substantial reductions in lumber rates on these grounds, it would be impossible to deny similar treatment to the products of other industries. There are a great many other products where the freight charges represent a greater percentage of the price than in the case of lumber and, giving effect to the contention of the applicant in this respect, there should be substantial reductions in the rates thereon. Needless to say, the revenues of the railway will not permit of any such action at the present time. There cannot be a general lowering of rates until the cost of transportation is further reduced.

During the depression, prices to consumers have, without stimulating consumption or creating additional traffic, been lowered to a far greater extent than could possibly result from very substantial rate reductions. Citing merely one example and taking lumber, Exhibit No. 4, filed by applicant, shows average selling price in 1928 as $24.70 per M feet b.m., f.o.b. mill, as compared with $16.50 in 1932 and $13.25 in 1933. Roughly, this price reduction is between two and three times greater than would be the reduction in rate applied for, taking Winnipeg as the point of destination, and between three and four times greater in the case of Calgary. But the price reduction, great as it was, did not stimulate the consumption of lumber on the prairies. The reason is obvious and is covered by remarks already made herein. According to data compiled by the Dominion Bureau of Statistics, the consumption of Canadian softwood lumber in the three prairie provinces was 828,686 M feet b.m. in 1928, as compared with only 226,447 M feet b.m. in 1932.

Under present conditions, substantial reductions in rates would not improve the position of the railways by increasing revenue from additional traffic created thereby, but, on the other hand, by still further lowering the earnings of the railways, would threaten the continuance of adequate railway service and, by preventing maintenance and other work, would tend to increase unemployment. Shippers, as well as the public generally, are vitally interested in the continuance and satisfactory operation of the railways as a very necessary transportation agency.

Many applications from various industries advancing the same argument as here put forward by applicant have been made to the Board during the past few years, as well as during former periods of depression, but, in no case, has the Board directed rate reductions on these grounds. Applications in substantially the same terms were made by the Canadian Lumbermen's Association in April, 1933, and by the Montreal Wholesale Lumber Dealers Association in September, 1933.

3

It is alleged that other producing districts have rate advantages to domestic markets.

It is stated British Columbia coast mills have a special rate to Eastern Canada. Lumber from British Columbia mills located on the water had practically ceased to move by rail to Eastern Canada during the season of navigation on the St. Lawrence river; it was moving via water through the Panama canal and coming up into Quebec and Ontario through St. Lawrence river ports. In May, 1934, the railways published a tariff establishing competitive rail rates to expire November 30, 1934. These rates were not as low as the water rates, but enabled them to secure some traffic from the water route.

Applicant admitted that any traffic the railway attracted from the water route would not have any effect upon it.

It is next stated that the Maritime Provinces enjoy special rates under the Maritime Freight Rates Act. This Act was passed by Parliament in 1927 as a result of the report and recommendation of the Royal Commission on Maritime Claims. It is not shown that applicant, or British Columbia shippers, have been detrimentally affected in the Ontario market by that Act. In 1930, the Maritime Provinces shipped 7,978 M. feet b.m. into the province of Ontario, as compared with 112,794 M feet b.m. from British Columbia.

It is then stated that the prairie mills have low rates to prairie destinations. Applicant submitted no data or evidence concerning the alleged low rates from northern prairie mills to prairie destinations, so that his contention in this respect is not clear. Of course, these prairie mills are nearer many of the prairie consuming markets and it consequently follows that the rates to such markets are lower because of the much shorter distance involved, but an examination of the tariffs shows that, for corresponding distances, the rates are approximately the same from the northern prairie mills as from the interior British Columbia mills. There is nothing on the record to indicate an undue rate advantage in favour of the prairie mills.

4

Applicant stated cost of service is not a controlling factor in the existing lumber rate structure. A rate difference of 1½ cents per 100 pounds over the Vancouver rate from some Vancouver Island points was cited as an example and which would be less than the additional cost over Vancouver for the service rendered.

Applicant is quite correct in the contention that cost of service is not a *controlling* factor in the existing lumber rate structure; nor is it a controlling factor with respect to the general rate structure of the country. In the first place, the exact cost of service for the movement of any particular portion of the traffic of a railway cannot be determined with accuracy. It was very early found, in the history of rate making, that the charges for transportation of different articles of freight could not be apportioned amongst such articles based solely on the cost of transporting them severally—even if such cost could be ascertained—because, if an attempt were made to base rates entirely on the full operating cost for each particular commodity, or character of service rendered, it would restrict, within very narrow limits, the commerce in articles whose bulk and weight are large as compared with their value, consequently, the carriage of low grade commodities for considerable distances would be prevented, while the rate for carriage of other articles of much greater value would be absurdly low. The actual difference in the cost of the movement of a carload of silk and a carload of coal is relatively insignificant, compared with the difference in value of the two carloads, and, under any theory of cost of service, the rate on coal would be prohibitive, whereas the silk would not contribute its fair share to the carrier's revenue. Accordingly, it has always been considered not unjust to apportion the whole cost of service on all the articles transported upon a basis that has regard to many considerations, such as character, use and value of commodity; bulk and weight; facilities and equipment required; risk attached to carriage; competition; volume of traffic; etc.

Thus, with respect to lumber, a common rate applies to a given destination from all origin points within a fairly large zone, so as to, as far as consistent, preserve a fair rate relationship between the different mills. For example, to Winnipeg the same rate applies from Fernie, 895 miles, Nelson, 1,091 miles, and from Nakusp, 1,156 miles. Then, as to destination points, the rates are relatively lower as the distance increases, in order to assist shippers to reach distant markets. For example, the rate from Nakusp to Regina is 45 cents, and,

to Winnipeg, 48½ cents, a difference of 3½ cents for an additional distance of 357 miles. Plainly, 3½ cents does not represent the cost of carriage of lumber from Regina to Winnipeg. A great deal more could be said on this point and many other and different illustrations given, but we do not consider this to be necessary.

To show "how the relative freight rates on lumber from British Columbia have affected the ability of producers like ourselves in interior British Columbia to reach their logical markets," applicant stated that twenty or twenty-five years ago 50 per cent of the lumber produced in the province of British Columbia originated east of the Cascades and was mainly for the domestic markets of Canada; that, since that time, there has been a gradual shift in the source of supply from British Columbia for domestic markets and, in recent years, the percentage produced east of the Cascades for all domestic markets in Canada has dwindled to less than 15 per cent of that shipped from British Columbia. Instead of showing that relative freight rates have produced the situation described, the statement indicates—whatever the reasons may be, and the Board has no information before it on this point—that influences and conditions entirely disassociated from freight rates affect the points of production and marketing of lumber. Lumber produced east of the Cascades for domestic markets outside of British Columbia *moves eastward* and, inasmuch as the normal lumber rates eastward from points west of the Cascades are, and always were, higher than from points east of the Cascades, the conclusion is inevitable that freight rates were not the cause of the shift of production referred to. To Eastern Canada from coast mills located on the water, movement in considerable volume by water is a comparatively recent development. The Prairie Provinces are a large and very important market for British Columbia and the rates thereto from the territory east of the Cascades are substantially below the rates from the British Columbia coast territory, as is clearly shown on Exhibit No. 3 filed by the applicant.

Applicant alleged that the present high level of rates: "has caused a movement of the source of main production to points nearer the markets" (p. 2268); "undue advantage is given to producers located nearer consuming markets" (p. 2269); "has forced the source of supply of certain lumber items to districts located nearer consuming markets" (p. 2273). These statements are in the form of a contention, but no detailed information was placed on record in proof of the assertions. Producing points nearer to consuming markets cannot, by an arbitrary rate adjustment directed by the Board, be deprived of the benefits of their location. The Railway Act does not sanction attempts to attain preferred rate treatment in order to overcome geographical disadvantages of location, or to equalize commercial opportunities, by employing piecemeal methods of rate adjustment to work to the advantage of one district and at the expense of another.

The background and development of the existing Western lumber rate structure should be briefly outlined. About twenty years ago, there were a number of controversies and complaints concerning these rates. Finally, in 1913, as a result of conferences between representatives of the shippers and the railways, agreement was reached and adjustments made which involved some substantial reductions and a rate relationship established as between the various producing districts. In the Western Rates Case, concluded in 1914, all rates in Western Canada were passed under review by the Board and many rate adjustments directed. These lumber rates were reviewed and approved. They were subsequently reviewed in 1917 in the so-called Fifteen Percent Case, and, in the Board's Judgment it was pointed out that a most important factor underlying the lumber rates in the West is their relation one to the other. It was stated that the whole Western lumber rate situation was full of difficulty, highly competitive, and presented a most technical rate problem, also involving

the question as to how some increase therein could be best made, without dislocation of traffic, by changing the rate relationship then existing between the various mills. The report of Chief Traffic Officer Hardwell is then quoted, in which the whole question was dealt with, not only so far as the British Columbia mills were concerned, but also from the other lumber shipping territories in Western Canada. The Judgment then stated that the adoption of Mr. Hardwell's recommendations would put the lumber rate structure upon a more scientific basis than it had been in the past; further, that his recommendations preserved the outcome of the agreement between the associated Western mills and the railways. Since that review of this lumber rate structure and the adjustments then made, there has been no complaint concerning it, so far as we are aware, from which it is assumed to have been considered by the shippers an adjustment that was equitable, both as to the rates and the rate relationship, between different shipping territories. The present application, of course, is not an attack upon it from this standpoint, but based on entirely different grounds, as already analysed herein. It is plain that this lumber rate structure could not be disrupted as to one shipping territory alone; that it would involve the entire Western lumber rate structure, and, concerning which, there has been no complaint before the Board and nothing to indicate any justification for changing it.

These rates having been reviewed by the Board and approved as being not unreasonable, and the only change therein that resulting from the general rate advances imposed on all traffic by reason of increased costs of railway operation, then these rates are inherently reasonable until they have been shown unreasonable upon a proper record containing evidence and proof in support of such a conclusion. There is no such record here. Not one scintilla of evidence was given showing the present rates to be unreasonable or discriminatory in relation to the present general freight rate structure; that they are unreasonable as compared with rates on the same commodity from other territories; that they are unreasonable from the standpoint of the underlying principles that apply insofar as the rate structure is concerned; that they are unreasonable from the standpoint of the relationship between the rates on various commodities, the relevant factors controlling in the fixation thereof being considered; or that they are unjustly discriminatory against one producing district and unduly preferential to another.

The Board has repeatedly held that it cannot order the railways to put in unremunerative rates, nor rates so low as to be unfairly out of line with the rates which are necessary to be maintained in order to permit the continuance and satisfactory operation of the railways. The rates here applied for would clearly come within the above category; further, they would create rate maladjustments and unjust discrimination and, consequently, be in violation of the specific provisions of the Railway Act.

For the reasons set out herein, the application should be refused.

Ottawa, Ont., March 1, 1935.

Application of the Arrow Lakes Lumber Company, Limited, Nakusp, B.C., for a reduction in rates on lumber from Nakusp to the Prairie Provinces and Ontario; and to Quebec and the Eastern Seaboard and New Westminster and Vancouver for export.

File No. 26901.63

JUDGMENT

Garceau, Deputy Chief Commissioner (Dissenting):

This is an application for the restoration of 1916 rates on the movement of lumber from Nakusp, B.C., to the Prairie Provinces, the establishment of a 60-cent rate to Ontario and a 60-cent export rate to Quebec and the Eastern Seaboard; also, a 15½-cent export rate to New Westminster and Vancouver.

It is submitted by the applicant that under the present level of rates, traffic in lumber from interior British Columbia will soon decline *until the industry and those engaged therein will leave the district and the mainstay of economic life in interior British Columbia will be a thing of the past.*

I will add that the various exhibits filed, the evidence given, justify that contention; or, in the words of our Chief Traffic Officer, at p. 5 of his memo: "Summarized, the contention is that current rates are unreasonable because they are higher than the traffic can bear." As already stated, the applicants have proven this assertion, i.e., that the rates are higher than the traffic can bear.

The proposition "that rates ought never to be higher than the traffic can bear" is sound economy. The railways are common carriers, public utilities; their essential function is to serve the public, to facilitate the interchange of commodities.

The country has spent millions and millions to overcome geographical difficulties, to permit the interchange of commodities between the different provinces of the Dominion; in order to encourage industry, agriculture; railways have been built or heavily subsidized by the country, and all these expenses, sacrifices, would be of no use if the country could not, at least in its hour of need, have the service of those railways "at the cost that traffic can bear." I submit that a rate higher than traffic can bear is unjust and unreasonable "per se" and whenever such rates exist on a traffic that has a bearing on the economic life of the country, such rates ought to be reduced to the rate that the traffic can bear.

The lumber industry is the basic industry or at least one of the most important industries of interior British Columbia. Its existence and development are necessary "to the mainstay of the economic life in that territory"; if that part of the province is not to become a desert, covered with ruins of past habitations and industry, opportunity must be given to that industry to reach the markets. That the actual rates will result in wiping out that industry is amply proven. It is implicitly admitted in the memo of our Chief Traffic Officer, at p. 5: *"The Applicant put forward very clearly the conditions and difficulties to which he was subjected and, if the matter could be dealt with from the standpoint of sympathy alone, the way would be easy."*

I agree that sympathy is not a dominant factor to determine the proper rates but it is a factor which can permit to visualize better the obligations of the railways, their duty towards the public, to understand their proper function: service.

National recovery is the problem of the hour. Every institution, agency of government, must think first of this problem, co-operate one with the other to that end, acknowledging that in so doing it works in the only way possible

towards its own recovery. The recovery of the whole, even at the price of sacrifices from every component part, is what must be aimed at. The railways must be more public-minded, in order to have the public railway-minded; must be impressed with the idea that their own salvation depends on public economic recovery.

The Board of Railway Commissioners was constituted by Parliament for the benefit of the public, to fix and control rates, to determine what shipping facilities shall be provided; to foster the interchange of commodities between the various portions of the Dominion as well as the encouragement of industry and agriculture which are essential to the economic life of the country. It can enforce such a policy.

The elaborate report of our Chief Traffic Officer cites numerous decisions which would tend to establish that the principle "that rates cannot be higher than the traffic can bear" should not be considered as a dominant factor of the reasonableness of a rate.

These decisions were rendered when the validity of this principle was not brought up as forcibly as it is now by actual conditions. The country is in a state of emergency and, in such a state, truths which were obscure when prosperity reigned have become glaringly evident lately. The experience of the past five years has taught the world the fallacy of many past economic principles. Railways, governments, institutions, have acknowledged past errors, have listened to experience, and it is no reflection on former decisions to reach different conclusions at this time; we are even directed to do so by special disposition of the Railway Act, section 325.

In a broad sense, the question to decide in the present case is "whether public weal will be sacrificed to the exigencies of the railways or the railways compelled to serve public weal."

Although this application is made by the Arrow Lakes Lumber Company, it covers lumber rates from all other shipping points in the interior of British Columbia (p. 2255 of Evidence) and the principle involved, that the rates should never be higher than the traffic can bear, is of general application. I have dealt with that question.

It is contended that the reductions asked by the application might cripple the railway service. That contention is not justified.

The application is for the restoration of 1916 rates on the movement of lumber from the interior of British Columbia to the Prairie Provinces. The railways prospered under those rates.

It has been said time and again by the President of the Canadian Pacific Railway Company, Mr. Beatty, that the cost of transportation "per se" has been reduced to a great extent since that period. The various reports of each railway establish that fact: to-day the railways are not operating at a disadvantage owing to the freight rates but on account of lack of tonnage. It is a truism to say that the greater the tonnage, on account of cheaper motive power, the cheaper it is to carry commodities. If we take into consideration what has been proven in this instance, we must assume that reduced rates would mean greater tonnage and it is safe to conclude that any reduction in freight rates would be more than compensated by the increase in tonnage. Moreover, it must be borne in mind that this industry, being the most or one of the most important in that section of the country, its recovery would mean

wages, buying power to the population, a favourable reaction on every other activity, and the natural sequence would be a greater volume of traffic of every kind.

The policy of the railways, in the interest of the public and in their own interest, must be to foster trade and the granting of this application would sanction such a policy.

When there is competition between common carriers, the railways generally reduce their rates or tolls to any scale, in order to keep their traffic from a competitor. If they can reduce their rates for their own benefit, they must reduce them when public weal is at stake.

The report of our Chief Traffic Officer lays stress on the fact that the granting of this application would imperil or react on the general freight rate structure.

The freight rate structure was revised many a time and the last revision, in 1927, may now be obsolete; the last few years may have disclosed that it contains certain deficiencies which were not apparent in 1927. As I have already stated, conditions have altered radically since then. How can it be contended that it ought not to be altered and revised when every other factor of trade and commerce is under trial and revision?

The present rate structure was censored by the report of the Royal Commission inquiring into railway transportation in 1931-32, at p. 50 (sections 163, 164, 165 and 166); it is mentioned at paragraph 163 that "it has been the practice to establish railway freight rates on the assumption that the transportation of freight was to all intents and purposes the monopoly of the railways." This is specifically true in the present instance.

The interior of British Columbia has no other transportation facilities than the railways and the railways will not reduce the rates according to the toll or rate that the traffic can bear because there is no competitor. British Columbia coast has the Panama Canal route; inland Manitoba has the Hudson Bay route and because those parts of the country have more shipping facilities, the railways give them reduced rates, but they refuse to apply the same reductions to less favoured localities.

This policy is within the letter of the law but is not within the spirit of the law which considers equalization of tolls and rates the best method of serving the public. I will say with the Royal Commission: "It is essential that the country should have the free and unhampered use of the cheapest form of transportation"—Section 165; not "one part of the country" but "the country."

The principle that public weal must be considered first and that the railways are obliged to supply the public with the facilities necessary to carry on has been recently affirmed by the Board in two judgments: Application of the Brandon, Saskatchewan and Hudson's Bay Railway Co.,—Vol. 24 Board's Judgments, Orders, Regulations and Rulings, p. 393; and Application of the Vancouver, Victoria and Eastern Railway and Navigation Co.,—Vol. 24, Board's Judgments, Orders, Regulations and Rulings, p. 401. The question decided in these two cases was not one of rates but concerning the discontinuance of train service; nevertheless, the principle involved was the same. At p. 407, it is stated:—

> "The unquestionable weight of authority is that the issue in applications to abandon is controlled by the factor of inconvenience and consequent loss to the public resulting from the abandonment, and not the fact that the operation has been carried on at a loss to the railway."

What is true for the operation of trains is also true for the issuance of rates.

The Board is an agency of government. Section 32 of the Railway Act says:—

> "Whenever, by an Act or document, the Railway Committee of the Privy Council is given any power or authority, or charged with any duty with regard to any company, railway, matter or thing, such power, authority or duty, may or shall, be exercised by the Board."

This power has been amplified by several dispositions of the Act. The Board has every power and authority to revise, fix and determine rates according to altered conditions. It is the body delegated by Parliament to assure to the public all transportation facilities and accommodation necessary to the economic life of the country; having such authority, it has also the responsibility to enforce such measures as are necessary to the fulfilment of such an end or purpose.

I would grant the application and direct the railway company to reissue the tariffs prevailing in 1916 from the interior of British Columbia to the Prairie Provinces and to issue a 60-cent rate to Ontario, a 60-cent export rate to Quebec and the Eastern Seaboard, and a 15½-cent export rate to New Westminster and Vancouver, as being the highest rates that the traffic can bear.

OTTAWA, March 6, 1935.

ORDER No. 51798

In the matter of the application of the Arrow Lakes Lumber Company, Limited, of Nakusp, British Columbia, hereinafter called the "Applicant Company," for a reduction in rates on lumber from Nakusp to the Prairie Provinces and Ontario; and to Quebec and the Eastern Seaboard and New Westminster and Vancouver for export:

File No. 26901.63.

FRIDAY, the 8th day of March, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Nelson, British Columbia, November 9, 1934, in the presence of counsel for and representatives of the applicant company and the Canadian Pacific Railway Company, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

S. J. McLEAN,
Assistant Chief Commissioner.

Application of D. A. Davidson, St. Laurent, Man., for an order directing the Canadian National Railways to put in effect reduced fares from Winnipeg to Laurentia Beach, and return.

File No. 30969.17

JUDGMENT

By The Board:

This application was made July 31, 1934, following negotiations with the railway, and was heard at Winnipeg, November 22, 1934. Applicant claims that Laurentia Beach is of white sand; that the water is clear and pure; and that the beach is equal to any in Manitoba; that he has invested much money, and made many improvements; also, that many persons prefer this beach, owing to its quietness. At pages 2725 and 2726 he referred to the large amount of freight traffic on this line, and stated that trucks were taking the business from the railway—12 being operated last fall. He also admitted that he purchased all his supplies in Winnipeg, but that none of this was moved by rail. Further, he claims that there is discrimination, owing to the fact that the railway has made lower rates to other beaches in Manitoba, of approximately the same distance from Winnipeg. A petition was circulated among the residents along the railway adjacent to lake Manitoba, which was largely signed. In this petition it is stated:—

> "We are wholly behind the application of Mr. Davidson, asking for excursions to Laurentia Beach and neighbouring Beaches, which is a well-known and popular resort, and feel if excursions are run to there and the same is given similar newspaper publicity as that given to Grand Beach, it will receive patronage enough in a short time to place it in the foremost ranks with any of the beaches in the Province of Manitoba.
>
> "It is unfair and unjust to us and not in the interests of the railway that we should not have the co-operation of the company, in establishing a beach on Lake Manitoba and running excursions thereto, instead of trying to divert all the traffic possible to Grand Beach. which is of no benefit or interest to us who are the principal supporters of this line.
>
> "We would also ask that excursion rates of one cent a mile be made over this line out of Winnipeg similar to the one cent a mile from points along this line into Winnipeg."

A petition was also received from the property owners at Laurentia Beach, supporting Mr. Davidson's application, and stating:—

> "As this beach is served by the same railway system that serves Grand Beach, we do not approve of the actions of the officials of the Canadian National Railways concentrating the cheap rate excursions to Grand Beach alone, greatly to the detriment of this and other beaches and to the disappointment and disapproval of many citizens of Winnipeg who would frequent this Beach if similar cheap fares as to Grand Beach were available to them."

While it has been stated that many people desire to come to Laurentia Beach in preference to Grand Beach, account of its quietness, it is believed that the one-day and evening fares would be largely used by the younger people, who would naturally be attracted to Grand Beach, where there is a wider variety of recreation.

The application was also supported by some forty business concerns in Winnipeg, and a letter was filed from the Grey Goose Lines stating they were prepared to put on buses to take care of excursionists from St. Laurent station

to the beach, a distance of three quarters of a mile. The charge therefor would, of course, be in addition to any fare which the railway might make. At Grand Beach, the station is located within 100 yards of the water.

The railway stated it did not believe sufficient traffic could be developed to justify the additional train service necessary to comply with the request of applicant, and was unwilling to make the experiment. It is also stated that the low fares in effect to Grand Beach were made in competition with the Canadian Pacific Railway, which serves Winnipeg Beach.

First-class fares, return fares and week-end fares are in effect between Winnipeg and St. Laurent, and between Winnipeg and Grand Beach. A 10-trip ticket is also on sale at Winnipeg to both points. In connection with this latter ticket, applicant stated, at pages 2716 and 2717:—

> There is no advantage in these 10-trip tickets. The Bus Company operating up there reduced its fares at the commencement of last season from $1.50, single fare from Winnipeg to St. Laurent, to $1.25, and the return fare from $2.50 to $2. We find that if a man buys a strip of tickets he has to deposit $10, and run the chance of whether he is going to use them or not.
>
> These tickets are not of any assistance that I can see, in the matter of getting people out from Winnipeg, because they are not going to deposit $10 when they can buy a return ticket for $2.

The following additional tickets and fares are in effect during stated dates in the summer, from Winnipeg to Grand Beach, but not to St. Laurent:—

50-trip, good only for individual purchaser, and for 30 days from date of sale	$21 00
1-day excursion, going and returning same day	1 00
Evening excursion, going and returning same evening	0 50
Return fare, good for 16 days	2 35

The summer train service to St. Laurent in 1934 was as follows:—

Leave Winnipeg, 2 p.m., arrive St. Laurent, 4.15 p.m.
Leave St. Laurent, 8.22 a.m., arrive Winnipeg, 10.40 a.m.

The 50-trip ticket is used by commuters who travel to the city each morning and return each evening, as the 25 round trips must be made within the 30-day limit. It is apparent that no use could be made of this ticket to St. Laurent with the present train service.

There being no morning or evening trains out of Winnipeg, no use could be made of the 1-day or evening fare. There remains only the return fare of $2.35, with a 16-day limit.

At the hearing, Mr. Owens, for the company, filed a Summary of Train Services between Winnipeg and St. Laurent, from April, 1905, to date. It is noticed that, prior to 1919, there was an early morning service from St. Laurent to Winnipeg, and an evening service from Winnipeg to St. Laurent, which would enable passengers to make use of the 50-trip commutation ticket. In 1919, the early morning train was discontinued except on Saturday, and, in 1920, this Saturday train appears to have been discontinued.

At page 2729, Mr. Owens stated:—

> "There never was a day rate except on a guaranteed excursion to St. Laurent or Oak Point. There never was, since the inception of the railway."

According to our records, this is an incorrect statement, as, on referring to the tariffs, it is found that 55-trip tickets were in effect between Winnipeg and St. Laurent until the summer of 1920, and, thereafter, a 50-trip ticket, in accordance with the Board's Order No. 29512, dated April 1, 1920, and fares

continued up to and including the season of 1924. It is also found that, during the summer of 1918, a day rate of $1 and an evening rate of 50 cents were in effect to both Grand Beach and St. Laurent. These latter fares, however, were cancelled at the end of that season, between Winnipeg and St. Laurent, but continued between Winnipeg and Grand Beach. The reason for the cancellation of the fares to St. Laurent is not known, but, in any event, the train service would not have enabled excursionists to take advantage of same.

It is also noted that the 50-trip ticket, while continued in the tariff up to and including 1924, would have been practically useless, as the daily train service would not have enabled passengers to reach Winnipeg in time for business.

The Board, however, is concerned only with the fares at present in effect.

As to the powers of the Board to order the railway to put in effect the reduced fares required by the application, this has been determined, and we quote from page 33 of Judgment of Commissioner Boyce, dated April 1, 1920, in the General Commutation Case:—

> "The standard passenger rate in Eastern Canada is 3 cents (now 3·45 cents) . . . . (this also applies to the territory covered by the application) . . . . and, within this standard, the railways have discretion as to varying the rate under certain conditions, subject to the obligations imposed by the Railway Act in regard to discrimination.
>
> That discretion still remains with the railways, subject, as before stated. . . . so that, subject to the obligations of the Act, as regards discrimination, the railway is left free to develop and manage its own business, and where, in its judgment, it will develop or increase passenger traffic in any sections or areas, to employ mileage, excursion or commutation rates for that purpose."

In the petition signed by the residents adjacent to Lake Manitoba, there is request for an excursion rate of 1 cent per mile out of Winnipeg. This rate has been used by the companies for 1-day excursions, but is not of general application, and, under the Board's rulings, the establishment of such rate is entirely within the discretion of the company.

The only matter, therefore, that could be considered by the Board is the question of unjust discrimination. A similar situation was dealt with in the Second Brampton Rate Case, (C.R.C. XI, pages 374-375), wherein it was stated:—

> "If a railway company exercises the discretion given to it under section 341 (now section 345), that discretion remains uncontrolled, and should not be interfered with by the Board unless there is some affirmative evidence that it results in unjust or unfair discrimination between persons or localities. In saying that there should be some affirmative evidence I am not overlooking the provisions of section 77 (now section 319), because it does not seem to me to be possible that if a railway company gives a commutation rate between New Westminster and Victoria, the mere statement of that is sufficient to require and justify the Board in ordering the same railway company to give a commutation rate between some point within the same distance of Saint John and the latter city; but that, although the onus is upon the railway company, the applicants should in all of these cases give some affirmative evidence that the exercise of the railway's discretion is unfair, unreasonable or results in discrimination. I do not understand that there is anything wrong or evil in discrimination as long as it does not hurt anybody. The evil of it, as I understand it, is that because persons or localities are discriminated against it results in unfair play and injury to the individuals or to the localities affected. In the absence of any injury to individuals or localities, what difference does it make whether there

is discrimination? The Railway Act, as I understand it, authorizes and justifies discrimination. It is only an undue, unfair or unjust discrimination that the law is aimed against."

The Canadian Pacific Railway has fares in effect between Winnipeg and Winnipeg Beach, located on the west side of lake Winnipeg, and 10-trip and 55-trip tickets have been available since 1905. In May, 1912, rates of $1 for day, and 50 cents for evening were put in effect, and in 1916 the Canadian National Railways adopted the day fare of $1, but did not establish the evening fare until June, 1918, when, as before stated, the fares were also applicable to St. Laurent.

Grand Beach is directly opposite Winnipeg Beach, on the East side of Lake Winnipeg, and the Canadian National Railways felt justified in meeting the rate established by the Canadian Pacific Railway. At St. Laurent, however, there is not this competition.

It is not considered unjust discrimination to have commutation fares in effect to one locality and not to another with similar mileage and conditions. Many applications have been made for the establishment of commutation fares, but the Board has, in every case, refused to extend the territorial applications thereof.

A person desiring to travel to Laurentia Beach, on lake Manitoba, is in no way injured by reason of the lower fare published to Grand Beach on lake Winnipeg.

Applicant has failed to show there is unjust discrimination in the present published commutation and excursion fares of the Canadian National Railways, and the application should be dismissed.

OTTAWA, ONT., March 1, 1935.

Application of D. A. Davidson, St. Laurent, Manitoba, for an Order directing the Canadian National Railways to put in effect reduced fares from Winnipeg to Laurentia Beach, and return.

File No. 30969.17

JUDGMENT

GARCEAU, DEPUTY CHIEF COMMISSIONER:—(Dissenting.)

I cannot agree with the report of our Chief Traffic Officer. Every section of the country ought to be given equal opportunity, when possible, to develop and progress.

Since a few years, the Canadian National Railways, during the summer give special passenger rates, seasonal or commutation tickets from Winnipeg to Grand Beach, on lake Winnipeg, but refuse to grant the same privileges to Laurentia Beach, on lake Manitoba.

Both localities are within approximately the same distance from Winnipeg but on different routes of the same railway.

The applicants ask that the same special fares, seasonal or commutation tickets be issued from Winnipeg to Laurentia Beach as to Grand Beach. Their application is supported by many business men and residents of the locality along the railway adjacent to lake Manitoba.

The railways have not justified their discrimination against Laurentia Beach. They are obliged to show that their discrimination is not unjust.

The same rates to Laurentia Lodge or Beach as are enjoyed to Grand Beach would serve public interest.

I would grant the application.

OTTAWA, March 6, 1935.

ORDER No. 51799

In the matter of the application of D. A. Davidson, of St. Laurent, Manitoba, for an Order directing the Canadian National Railways to put in effect reduced fares from Winnipeg to Laurentia Beach, and return:

File No. 30969.17

SATURDAY, the 9th day of March, A.D. 1935.

S. J. McLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Winnipeg, Manitoba, November 22, 1934, in the presence of Counsel for D. A. Davidson and the Canadian National Railways, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

S. J. McLEAN,
Assistant Chief Commissioner.

Application of the Corporation of the City of Toronto, Ontario, for an Order under Section 259, of the Railway Act, or other appropriate section, requiring The Consumers Gas Co., The Bell Telephone Company of Canada, The Toronto Electric Commissioners, and the Toronto Transportation Commission to bear the whole cost in connection with moving their properties by reason of the construction of the subway structures, as was provided in Order No. 44622, dated April 22, 1930, at Carlaw Avenue and Gerrard Street, Toronto, Ont.

File No. 588·59.

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Under date of April 22, 1930, Order No. 44622 issued on the joint application of the City of Toronto and the Canadian National Railway. This authorized the construction of two new subways, one at Carlaw avenue and the other at Gerrard street East, in the city of Toronto. The new subway on Carlaw avenue is almost on the same site as the old subway. The central line of the latter ran in northwest and southeast direction, while the central line of the new subway runs north and south.

Gerrard street, it was stated by Mr. Tilley at the hearing, was laid out originally so as to run through the old subway. The following words were used by him: " The nearest point in chronological order is when the city came to the conclusion that the layout did not suit because Gerrard street, which runs east and west, swerved to the south, and Carlaw avenue coming up from the south, the two of them swerved off their projected line and made a common passage-way through the subway. It would be wrong to say the streets were diverted at this point because there were no streets before this change occurred. Carlaw avenue did not run in a direct line to the subway, nor did Gerrard street run straight along from its western end." Therefore, both streets were diverted in order to run through their respective subways. Order No. 44622 authorized the construction of subway structures. The railway was to contribute the sum of $100,000 towards the total cost of the work. The city was to pay the railway for engineering as the work proceeds, 5 per cent of the cost of the work carried out by the railway, this to form a part of the total cost of the work. The cost

of removing the present structures, as well as temporary work, false work, and other work required to maintain railway and street traffic during construction to form part of the total cost of the work; that the distribution of the balance of the cost of the work after the railway's contribution of $100,000 should be reserved for further consideration of the Board. Application was made September 25, 1934, for a hearing in the matter, and for a direction that the public utilities concerned, the Consumers Gas Co., the Bell Telephone Company of Canada, the Toronto Electric Commission and the Toronto Transportation Commission be required to bear and pay the cost of removing their respective plant, the removal being necessitated by the construction of the subways.

The matter was heard at a sittings of the Board held in Toronto on December 19, 1934, all the parties in interest being represented by Counsel at the hearing. The city bases its application on former rulings of the Board under which utility companies were required to make the changes at their own expense. Counsel for the utilities distinguished the previous rulings from the circumstances in this case chiefly on the ground that the orders in those cases were made in the exercise of the Board's power to provide for the safety and protection of the public at railway and highway crossings; that that was not the consideration which moved the Board to make the order in question, but a matter of street improvement, towards the cost of which they could not and should not be obliged to contribute.

The argument for the city in brief was that the order must of necessity have been one for the protection, safety and convenience of the public, since it was made under sections 257 and 259 of the Railway Act; that this fact makes the Board say definitely that it is a work for protection.

In deciding what weight, if any, should be given to the fact that the section appears in the recital to the order as establishing that the work was one for protection, it is necessary to consider the circumstances under which the order issued. The order was entirely a consent matter, and went as such, in exactly the form and terms of the draft filed with the joint application by the parties. No notice was served upon the utility companies who would be affected by the works. The Board did not investigate the conditions at the point of crossing to determine whether or not the proposed subways were necessary for the public protection, and did not make the order for that purpose. The city, for its own purposes, to improve the conditions at the point of crossing, counsel for the city at the hearing said (p. 2886 of the record), decided on the works, and as a railway crossing was involved which required the approval of the Board, applied jointly with the railway company for such approval. There were no engineering objections to the construction, and as there seemed no good reason to withhold its consent, the order in the draft form submitted by the parties issued. The order, as in the case of the British Columbia Electric Ry. Co. *v.* Vancouver, Victoria and Eastern Railway and Navigation Co., and City of Vancouver (1914) A.C. 1067, 18 C.R.C. 287, was of a purely permissive character, granting a privilege to the corporation, and leaving it to the corporation to decide whether they shall avail themselves of it or not. Had the city decided not to go on with the work, there was no suggestion by anyone at any time that the Board would have ordered it to do so for public protection.

That public safety and protection is the foundation for the exercise of the Board's power to assess any part of the cost of works authorized or ordered by it against interested or affected parties is made clear in the Supreme Court of Canada judgment in Toronto Ry. Co. *v.* City of Toronto, 53 S.C.R. 222. After discussing the British Columbia Electric decision, which the court distinguished, the Chief Justice, at p. 225, says:—

> "Now the facts in the present case are wholly different. It is abundantly clear from the record that the substantial and, indeed I think I may say only, reason for the order of the Railway Board for this grade separation was the elimination of dangerous crossings."

Davies, J., at p. 227:—

> "The main question of the jurisdiction of the Board to make the order involves the constitutionality of the provisions of the 'Railway Act' under which it professedly was made, and also involves the questions whether, assuming the sections to be constitutionally valid, the order of the Board was really and truly made under its paramount power of providing at railway and highway crossings for the safety and protection of the public, or whether the subway at Avenue road was a matter really and practically of street improvements merely, the cost of which the appellants could not be obliged to contribute to."

Observations made by the then Assistant Chief Commissioner, and the argument of counsel for the street railway company who contended that the order was not made "under the paramount power for protection and safety," necessitated a close scrutiny of the proceedings before the Board at the several meeetings to determine what the real grounds were on which the order complained of was made. Davies, J., at p. 229:—

> "I have made such a scrutiny with the result that no doubt exists in my mind that the controlling ground which moved the Commissioners to make the order in question was the safety and protection of the public and that the separation of the grades at Avenue road was ordered mainly if not entirely for that reason, and not with any idea of municipal improvement. The observations made by the Assistant Chief Commissioner in his reasons for making the subway order were intended, I think, not as reasons for the making of the order for the subway, but rather as reasons in support of the quantum of the cost which they had allotted to the Toronto Railway Company to pay."

After quoting from my concurring judgment to the effect that the work there considered was "undoubtedly in the interest of public safety," and "the fact that the method of distribution of cost has had the sanction of precedent is, to my mind, by no means the most important factor," Mr. Justice Davies, at p. 230, says:—

> "On the whole, I repeat, the only conclusion I could draw from a careful reading of the whole record is that the paramount consideration which weighed with the Board and moved it to make the order was the 'protection, safety and convenience of the public'."

The evidence in the present case establishes that the "protection, safety and convenience of the public" was not "the paramount consideration which weighed with the Board and moved it to make the order."

The Board's judgment in C.N.R. *et al v.* Bell Telephone Co. of Canada *et al,* 40 C.R.C. 29, was referred to by counsel for the city in support of his application. The circumstances of that case are clearly distinguishable from those here. There the public utility companies were ordered by the Board to move such of their utilities as might be affected by the construction of the subways in question, and, as the judgment points out, the removal of these utilities was done "in compliance with an order of the Board made for the protection, safety and convenience of the public." *Ibid* p. 37.

A careful reading of the judgment shows that the order authorizing the subway construction was made for the protection, safety and convenience of the public, and it was upon that ground that the Board exercised the power to apportion part of the cost of the work against the utility companies. That is not the situation in the present case. There was no question of the works here being necessary or having been ordered for public protection. There was no order against the utility companies to remove their facilities. It was, as suggested in the Privy Council decision, permissive in character and made

with the object of enabling the corporation to alter the grading of the streets, and not with a view to the public safety. In short, as stated, it was a consent matter, to enable the city to carry out works which in its judgment would improve the conditions at the point of crossing.

The judgment recognizes the well established principle of law that where private property is taken or injuriously affected in the carrying out of works authorized by Parliament, the owner must be compensated (*ibid* p. 39); but because of the fact that subways recently completed or then in the course of construction may have been started relying to some extent on the Board's adherence to its earlier ruling (*ibid* p. 42), it was felt that, under the circumstances of the case, the practice should be followed.

The evidence here is that when deciding upon the construction of the new subways at Carlaw avenue and Gerrard street East, the city was not relying, nor was it influenced to the slightest extent on the former ruling of the Board that the public utilities affected would have to move their facilities at their own expense. In this connection counsel for the city at the hearing said that when the city took steps to put itself in funds to do the work it did not know "whether we would have to pay the whole cost or not." (P. 2886 of record).

Whether, in the present case, the Board has jurisdiction to require the utility companies to contribute towards the cost of the works in question it is unnecessary for me, in the conclusion I have reached, to decide. It cannot be said that upon the evidence and record in this case "the paramount consideration which weighed with the Board and moved it to make the order was the 'protection, safety and convenience of the public'."

The application in the particular circumstances must be dismissed.

It follows that, as forming part of the total cost of the work, the public utilities should be reimbursed for the expenses incurred and paid by them in the removal and replacement of their facilities necessitated by the work involved in the location and construction of the said subways; such expenditures to carry interest at the rate of five and one half per cent per annum from the dates of payment to the dates of repayment.

March 19, 1935.

ORDER No. 51820

In the matter of the Order of the Board No. 44622, dated 22nd April, 1930, authorizing the Canadian National Railways to construct subway structures at Carlaw Avenue and Gerrard Street East, in the City of Toronto, Province of Ontario;

And in the matter of the application of the Corporation of the City of Toronto for an Order, under Section 259 of the Railway Act, or other appropriate section, requiring The Consumers' Gas Company of Toronto, The Bell Telephone Company of Canada, the Toronto Electric Commissioners, and the Toronto Transportation Commission to bear the whole cost in connection with moving their properties by reason of the construction of the said subway structures:

File No. 588.59.

THURSDAY, the 21st day of March, A.D. 1935.

S. J. MCLEAN, *Asst. Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Toronto, December 19, 1934, in the presence of counsel for the City of Toronto, The Consumers' Gas Company of Toronto, The Bell Telephone Company of Canada.

the Toronto Electric Commissioners, the Toronto Transportation Commission, and the Canadian National Railways, and what was alleged,—

It is ordered:

1. That the application be, and it is hereby, refused.

2. That, as forming part of the total cost of the work, the said public utilities be reimbursed by the Corporation of the City of Toronto for the expenses incurred and paid by them in the removal and replacement of their facilities necessitated by the work involved in the location and construction of the said subways at Carlaw avenue and Gerrard street east; such expenditures to carry interest at the rate of five and one-half per cent per annum from the dates of such expenditures to the dates of payment by the city.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51788

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and the Order of the Board No. 48547, dated May 3, 1932:

File No. 34822.13

WEDNESDAY, the 6th day of March, A.D. 1935.

S. J. McLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board Orders:

1. That the combination tolls published via Middleton, Nova Scotia, to points beyond the "Select Territory" in Supplement No. 14 to Tariff C.R.C. No. E-4324, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls from Middleton, Nova Scotia, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 14 to Tariff C.R.C. No. E-4324, approved herein, are to be made by adding to the rates in effect prior to July 1, 1927, from Bridgewater, Nova Scotia, the following arbitraries, namely,—

	Rates in cents per 100 pounds									
Classes	*1*	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*	*10*
	8	7	6	5	4	4	3	2	–	2

except that published normal through rates will apply if lower; 1½ cents per 100 pounds to be deducted account of water haul.

3. And the Board orders that the said Order No. 48547, dated May 3, 1932, be rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51794

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 342 of the Railway Act, for relief from posting certain tariffs at stations at which the population is 1,000 or less:

File No. 39362.

THURSDAY, the 7th day of March, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
HON. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered and declared:

1. That the applicants be, and they are hereby, relieved from posting tariffs to the following extent, namely:—

(*a*) That at stations at which the population is 1,000 or less only the Canadian Freight Classification, Standard and Local Specific Class Tariffs, and such other tariffs as are frequently used be posted; and that other tariffs for the use of agents at such stations be posted in the office of the Division Freight Agent in charge of that territory.

2. That rates required for occasional shipments for which tariffs are not posted at the station concerned may be secured by telegraph from the Division Freight Agent in charge of the territory.

3. That, in the event of any tariff not on file at a station being required on account of frequent movement, or if any shipper requests that a tariff be posted at a particular station, such tariff shall immediately be placed on file at such station.

4. That this order is subject to amendments or revision in the event such action appears necessary in the public interest.

S. J. MCLEAN,
Assistant Chief Commissioner.

ORDER No. 51807

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 342 of the of the Railway Act, for relief from posting certain tariffs at stations at which the population is 1.000 or less:

File No. 39362.

FRIDAY, the 15th day of March, A.D. 1935.

S. J. MCLEAN, *Asst. Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
HON. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered and declared:

1. That the applicant company be, and it is hereby, relieved from posting tariffs to the following extent, namely:—

(*a*) That at stations at which the population is 1,000 or less only the Canadian Freight Classification, Standard and Local Specific Class Tariffs,

and such other tariffs as are frequently used be posted; and that other tariffs for the use of agents at such stations be posted in the office of the Division Freight Agent in charge of that territory.

2. That rates required for occasional shipments for which tariffs are not posted at the station concerned may be secured by telegraph from the Division Freight Agent in charge of the territory.

3. That, in the event of any tariff not on file at a station being required on account of frequent movement, or if any shipper requests that a tariff be posted at a particular station, such tariff shall immediately be placed on file at such station.

4. That this order is subject to amendment or revision in the event such action appears necessary in the public interest.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51812

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for permission to file, to become effective April 15, 1935, on ten days' notice, certain revised pages to its Tariff C.R.C. No. E.-4737 Official Distance Table, to correct errors in mileages.

File No. 27612.107

THURSDAY, the 21st day of March, A.D. 1935.

S. J. McLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant company be, and it is hereby, granted leave to file, to become effective April 15, 1935, on ten days' notice, revised pages outlined on Exhibit "A," on file with the Board under file No. 27612.107, to its Tariff C.R.C. No. E-4737, Official Distance Table, to correct errors in mileages.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51813

In the matter of the application of the Cornwall-Northern New York International Bridge Corporation, hereinafter called the "Applicant," for approval of its Tariff C.R.C. No. 2, covering tolls to be charged in respect of the bridge of the Ottawa & New York Railway Company across the St. Lawrence River, between the Town of Cornwall, in the Province of Ontario, and the Town of Nyando, in the State of New York, on file with the Board under file No. 38514.1.

THURSDAY, the 21st day of March, A.D. 1935.

S. J. McLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant's tariff C.R.C. No. 2, covering tolls to be charged in respect of the bridge of the Ottawa and New York Railway Company across the St. Lawrence river, between the town of Cornwall, in the province of Ontario, and the town of Nyando, in the state of New York, on file with the Board under file No. 38514.1, be, and it is hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51816

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

THURSDAY, the 21st day of March, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board Orders:

1. That the toll published in Tariff C.R.C. No. 731, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 731, approved herein, is 12½ cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51817

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

THURSDAY, the 21st day of March, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board Orders:

1. That the toll published in Tariff C.R.C. No. 732, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 732, approved herein, is 7½ cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXV | Ottawa, April 15, 1935 | No. 2

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Re *cartage charges at shipping points advanced by Railways for collection from consignees.*

File No. 18663.96

By the Board:

The practice of the railways of advancing the cartage charges of a recognized cartage company, from shipper's premises to the railway at shipping point, for collection from consignees, has been referred to in the following judgments of the Board:—

11 C.R.C., p. 197;
4 Board's Judgments and Orders, p. 446;
19 C.R.C., p. 389;
24 C.R.C., p. 80;
26 C.R.C., p. 180.

The Board has ruled that this cartage service is not a railway service, or facility, within the meaning of the Railway Act; that the Board has no jurisdiction over cartage companies and is without power to regulate the charges made by them. In some tariffs, charges to be made for cartage service are shown simply for the information of the public and as indicating the charges at which the cartage companies are prepared to provide the service. As stated, however, the Board has no jurisdiction with respect thereto and, consequently, has nothing to do with it.

From time to time, representations are made to the Board concerning this question, from which it appears that, as a result of certain statements made in some of the judgments, there is an impression created in the minds of various consignees that the collection of these cartage charges from consignees has been sanctioned by the Board. This is not the case. These cartage charges are not tolls lawfully chargeable under the provisions of the Railway Act.

Ottawa, Ont., March 28, 1935.

ORDER No. 51827

In the matter of the application of the Express Traffic Association of Canada for approval of Supplement "E" to Express Classification for Canada No 8 on file with the Board under file No. 4397.115.

SATURDAY, the 30th day of March, A.D. 1935

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the said Supplement "E" to Express Classification for Canada No. 8, filed by S. H. Bullett, Chairman of the Express Traffic Association of Canada, on file with the Board under file No. 4397.115, be, and it is hereby, approved—the said supplement to be published as No. 5 to Express Classification for Canada No. 8—subject to the following additions, for the purpose of clarification, namely:—

"Page 22—Item 12 (k)-A. Cancels Item 12 (k) of Classification.

"Market eggs in corrugated strawboard boxes (complying with Condition of Carriage No. 27) *not exceeding fifteen dozen capacity* must be packed in individual one-dozen pulpboard containers, equipped with proper fillers. Not more than fifteen dozen eggs will be taken in a corrugated strawboard box.

"Page 28—Item 14-B. Cancels Item 14-A.

"Newspapers, Magazines and Similar Publications.

"Newspapers, Daily.

"When shipped daily by publishers or news companies on the date of publication or the evening immediately preceding, charge on the aggregate weight as follows:—

"To points not over 300 miles distant, $\frac{1}{3}$ of a cent per pound.

"To points over 300 miles distant to which the First Class rate does not exceed $6.05 per 100 pounds, $1\frac{1}{3}$ cents per pound.

"To points to which the First Class rate exceeds $6.05 per 100 pounds, one-half First Class Pound rates.

"Between competitive points the mileage of the company having the short line will govern.

"The rates on daily newspapers will apply on the news section of extra Saturday edition of newspapers published in Canada which are shipped by express daily, when such extra editions are shipped on the day of publication or the evening immediately preceding.

"(The rates on daily newspapers do not include vehicle service, are not applicable to shipments of newspapers forwarded C.O.D., and will apply only to publications generally recognized as a newspaper, and which consist wholly or in great part of political and other general news.)"

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51832

In the matter of the application of the Buffalo and Fort Erie Public Bridge Authority, hereinafter called the "Applicant," for approval of Tariff C.R.C. No. A-3, covering tolls to be charged for the use of the Peace Bridge between Fort Erie, Ontario, and Buffalo, New York.

File No. 36795.1

MONDAY, the 1st day of April, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant's said Tariff C.R.C. No. A-3 (cancelling Tariff C.R.C. No. A-2), covering tolls to be charged for the use of the Peace bridge between Fort Erie, in the province of Ontario, and Buffalo, in the state of New York, on file with the Board under file No. 36795.1, be, and it is hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51835

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for permission to cancel, on less than statutory notice, Tariff C.R.C. No. E-2235, covering reduced rates on hay for relief purposes when consigned to stations in Nova Scotia.

File No. 27612.108

WEDNESDAY, the 3rd day of April, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicants be, and they are hereby, granted leave to cancel, on five days' notice, but not later than 12 o'clock midnight, April 19, 1935, the said Tariff C.R.C. No. E-2235, covering reduced rates on hay for relief purposes when consigned to stations in Nova Scotia.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51836

In the matter of the application of the Dominion Atlantic Railway Company, hereinafter called the "Applicant Company," for permission to cancel, on less than statutory notice, Tariff C.R.C. No. 954, covering reduced rates on hay for relief purposes when consigned to stations in Nova Scotia.

File No. 27612.109

WEDNESDAY, the 3rd day of April, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant company be, and it is hereby, granted leave to cancel, on five days' notice, but not later than 12 o'clock midnight, April 19, 1935, the said Tariff C.R.C. No. 954, covering reduced rates on hay for relief purposes when consigned to stations in Nova Scotia.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51842

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

FRIDAY, the 5th day of April, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

It is ordered: That the following tariffs, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement 97 to Tariff C.R.C. No. E-1235.
Supplement 98 to Tariff C.R.C. No. E-1235.
Supplement 33 to Tariff C.R.C. No. E-1247.
Supplement 24 to Tariff C.R.C. No. E-1253.
Supplement 20 to Tariff C.R.C. No. E-1737.
Supplement 40 to Tariff C.R.C. No. E-1804.
Supplement 24 to Tariff C.R.C. No. E-1829.
Supplement 25 to Tariff C.R.C. No. E-1829.
Supplement 14 to Tariff C.R.C. No. E-1906.
Supplement 15 to Tariff C.R.C. No. E-1906.
Supplement 11 to Tariff C.R.C. No. E-2047.
Supplement 16 to Tariff C.R.C. No. E-2070.
Tariff C.R.C. No. E-2248.
Supplement 2 to Tariff C.R.C. No. E-2248.
Tariff C.R.C. No. E-2249.
Tariff C.R.C. No. E-2254.

S. J. McLEAN,
Assistant Chief Commissioner.

GENERAL ORDER No. 533

In the matter of Rule 13 (e) of the Regulations Governing Baggage Car Traffic in Canada prescribed by General Order No. 151, dated November 8, 1915, for the observance of every railway company within the legislative authority of the Parliament of Canada; and the application of the Canadian Passenger Association for an Order permitting the railway companies to carry their own non-inflammable moving picture films.

File No. 23328

FRIDAY, the 22nd day of March, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That railway companies within the legislative authority of the Parliament of Canada be, and they are hereby, permitted to carry their own non-inflammable moving picture films in regular or special baggage service.

S. J. McLEAN,
Assistant Chief Commissioner.

GENERAL ORDER No. 534

In the matter of running boards required to be provided on locomotives of railway companies within the legislative authority of the Parliament of Canada, under the Regulations with Respect to Railway Safety-Appliance Standards, prescribed by the General Order of the Board No. 102, dated February 17, 1913.

File No. 11654.110

WEDNESDAY, the 27th day of March, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board, and reading the submissions filed on behalf of the Canadian Pacific and Canadian National Railway Companies, the Brotherhood of Locomotive Firemen and Enginemen, the Brotherhood of Locomotive Engineers, and the Railway Association of Canada,—

It is ordered: That the Regulations with Respect to Railway Safety-Appliance Standards, prescribed by the said General Order No. 102, dated February 17, 1913, be, and they are hereby, amended by striking out the regulation with respect to running boards, under the heading of "Specifications Common to all Steam Locomotives," and substituting therefor the following, namely:—

"RUNNING-BOARDS

"*Number.*—Two (2).

"*Dimensions.*—Not less than ten (10) inches wide. If of wood not less than one and one-half ($1\frac{1}{2}$) inches in thickness; if of metal not less than three-sixteenths ($\frac{3}{16}$) of an inch, properly supported. Provid-

ing that in the case of locomotives of such dimensions in the diameter of that portion of the boiler between the front of cab and the forward end of the course adjoining the fire box a ten (10)-inch width cannot be obtained without extending beyond the side clearance allowance, the width of running-board may be reduced to a minimum of five and one-half (5½) inches tapering to ten (10) inches as the reducing diameter of the boiler permits. Pipes or other appurtenances must be so located as will provide for not less than the minimum widths of running-board above prescribed.

"*Location.*—One (1) on each side of boiler, extending from cab to front end near pilot beam. Running-boards may be in sections where necessary to provide for the location of air compressors, water pumps or heaters, reservoirs, or other appurtenances. (Flat-top steam chests may form section of running-board). Where necessary, section shall be placed over the top of the power reverse gear or similar devices located on or projecting through running-boards; all sections to provide the minimum widths prescribed. Where the difference in elevation between sections is twenty (20) inches or more, an auxiliary step shall be provided.

"*Manner of Application.*—Running-boards shall be securely fastened with bolts, rivets or studs.

"Locomotives having Wootten type boilers with cab located on top of boiler more than twelve (12) inches forward from boiler-head shall have suitable running-boards running from cab to rear of locomotive, with hand railing not less than twenty (20) nor more than forty-eight (48) inches above outside edge of running-boards, securely fastened with bolts, rivets or studs."

S. J. McLEAN,
Assistant Chief Commissioner.

de Demurrage Penalties assessed by the Canadian Car Demurrage Bureau under General Orders 201 and 349.

File 1700.338

The following tables present in summarized form the reports of the Canadian Car Demurrage Bureau covering car demurrage charges assessed for the year 1934.

NOTE—First two days over free time $1 per day: three days or more, $5 per day.

EASTERN CANADA

1934	Total cars handled	Number released within free time	Per cent	Number held over free time	Per cent	Number held under 3 days over free time	Per cent	Number held 3 days or more over free time	Per cent
January	139,356	133,881	96·07	5,475	3·93	4,631	3·32	844	·61
February	135,408	129,726	95·80	5,682	4·20	4,697	3·47	985	·73
March	158,976	152,547	95·96	6,429	4·04	5,207	3·27	1,222	·77
April	135,602	130,397	96·16	5,205	3·84	4,085	3·01	1,120	·83
May	153,840	148,041	96·23	5,799	3·77	4,800	3·12	999	·65
June	140,937	135,200	95·93	5,737	4·07	4,669	3·31	1,068	·76
July	139,964	134,830	96·33	5,134	3·67	4,301	3·07	833	·60
August	132,848	127,742	96·16	5,106	3·84	4,304	3·24	802	·60
September	136,595	131,794	96·49	4,801	3·51	4,163	3·05	638	·46
October	161,354	155,803	96·56	5,551	3·44	4,845	3·00	706	·44
November	145,249	140,147	96·49	5,102	3·51	4,501	3·10	601	·41
December	124,760	119,985	96·17	4,775	3·83	4,253	3·41	522	·42
TOTAL	1,704,889	1,640,093	.....	64,796	.....	54,456	.....	10,340	.....
Monthly Average	142,074	136,674	96·20	5,400	3·80	4,538	3·20	862	·61

WESTERN CANADA

January	80,155	77,822	97·09	2,333	2·91	2,116	2·64	217	·27
February	67,174	61,780	91·97	5,394	8·03	4,828	7·19	566	·84
March	71,404	69,876	97·86	1,528	2·14	1,317	1·84	211	·30
April	67,642	66,424	98·20	1,218	1·80	1,049	1·55	169	·25
May	58,910	57,861	98·22	1,049	1·78	940	1·60	109	·18
June	60,720	59,748	98·40	972	1·60	803	1·32	169	·28
July	60,677	59,621	98·26	1,056	1·74	961	1·58	95	·16
August	73,946	72,874	98·55	1,072	1·45	978	1·32	94	·13
September	100,497	98,236	97·75	2,261	2·25	1,930	1·92	331	·33
October	125,226	122,195	97·58	3,031	2·42	2,747	2·19	284	·23
November	101,844	98,992	97·20	2,852	2·80	2,486	2·44	366	·36
December	77,247	74,829	96·87	2,418	3·13	2,210	2·86	208	·27
TOTAL	945,442	920,258	.....	25,184	.....	22,365	.....	2,819	.....
Monthly Average	78,787	76,688	97·33	2,099	2·67	1,864	2·37	235	·30

OTTAWA, March 31, 1934.

A. D. CARTWRIGHT,
Secretary, B. R. C.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR JANUARY, 1935

Railway accidents	184, with	26	persons killed and	264 injured
Railway accidents at highway crossings	19, with	3	persons killed and	27 injured
	203	29		291

	Killed	Injured
Passengers	15	108
Employees	5	147
Others	9	36
	29	291

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents	
	Nova Scotia
1	Auto Truck—Truck driver failed to see or hear train. Licence N.S. C-18424.
	Quebec
2	Automobile—Auto driver failed to stop for crossing. Que. licences 70270, 73937.
1	Automobile—Auto driver failed to look for train, although warned. Que. licence T-2021.
1	Auto Truck—Truck driver failed to stop for crossing. Que. licence QL-1197.
	Ontario
3	Automobile—Auto ran into side of train. Ont. licences R-946, R-500, FD-315.
3	Automobile—Auto driver failed to see or hear train. Ont. licences 3811-X, B-1303, M-8175.
1	Auto Truck—Truck ran into side of train. Ont. licence 58-736-C.
1	Pedestrian—Failed to wait for train to clear crossing.
1	Pedestrian.
	Manitoba
1	Horse-drawn Vehicle—Driver failed to see or hear train.
	Alberta
1	Automobile—Auto ran into side of train. Alta. licence 25-400.
1	Automobile—Auto stalled on crossing. Alta. licence 43-148.
1	Auto Truck—Truck driver failed to see or hear train. Alta. licence D-11-741.
	British Columbia
1	Auto Truck—Truck driver failed to see or hear train. B.C. licence 9342.

Of the nineteen accidents at highway crossings, two occurred at protected crossings and seventeen at unprotected crossings. Nine of the accidents occurred during the dayight hours and ten at night.

Ottawa, March 29, 1935.

SUMMARIES OF ORDERS ISSUED BY THE BOARD

51780. Mar. 4—Authorizing C.N. Rys. to operate their trains over the subways at Carlaw Avenue and Gerrard Street East, Toronto, Ont.

51781. Mar. 1—Authorizing C.N. Rys. to remove their agent at Udney, Ont (caretaker to be appointed).

51782. Feb. 28—Directing C.P.R. to install a wigwag signal in addition to existing electric bell at Talbot Street Crossing, St. Thomas, Ont.

51783. Feb. 23—Directing C.P.R. to remove wigwag signal installed by C.N. Rys. at crossing of Dundas street, Tp. Etobicoke, and install same on east side of tracks at said crossing; and rescinding Order No. 41808, Nov. 22, 1928.

51784. Mar. 5—Relieving C.P.R. from maintaining cattle guards at seventeen crossings on their MacTier Subd'n, Ont.

51785. Mar. 5—Declaring Pere Marquette Ry. crossing, first east of Walkerville Jct., Ont., protected to Board's satisfaction so long as present speed limitation of 10 miles an hour on passenger trains and 6 miles an hour on freight trains is in effect.

51786. Mar. 6—Declaring C.N. Rys. crossing first just east of Valois Station, Que., protected to Board's satisfaction.

51787. Mar. 6—Authorizing C.P.R. to construct branch line to serve W. Benton Evans, near Minto, N.B.

51788. Mar. 6—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, combination tolls published via Middleton, N.S., to points beyond the "Select Territory" in Supp. 14 to Tariff C.R.C. No. E-4324 filed by C.P.R. under sec. 9.

51789. Mar. 7—Declaring C.P.R. crossing 0·2 of a mile north of Dibblee Station, N.B., protected to Board's satisfaction.

51790. Mar. 6—Approving location and details of new station proposed to be erected by C.N. Rys. at Grande Cascapedia, Que.

51791. Mar. 6—Approving change in location of C.N. Rys. proposed standard shelter and platform at Douglastown, Que.

51792. Mar. 8—Approving plans showing reconstruction of bridge by C.N. Rys. over South Thompson River, at Kamloops, B.C.

51793. Mar. 8—Authorizing New York Central R.R. to remove their agent at Cecile Jct., Que. (caretaker to be appointed).

51794. Mar. 7—Relieving C.N. Rys. from posting certain tariffs at stations at which the population is 1,000 or less.

51795. Mar. 9—Amending Canadian Freight Ass'n Tariff No. 145, C.R.C. No. 154, by adding to the commodities specified therein "Grain, rejected account fire-burnt," and "Grain, sample fire-burnt"; and directing that the application so far as ground feed grain is concerned be refused.

51796. Mar. 11—Approving certain signal appliances on cars of the Grand River and Lake Erie and Northern Rys.

51797. Mar. 11—Directing C.P.R. to install automatic bell and wigwag at crossing of Queen street, Tp. Etobicoke, mileage 1·21 Obico Cut-off, Toronto Terminals, Ont.

51798. Mar. 8—Refusing application of Arrow Lakes Lumber Co., Ltd., Nakusp, B.C., for reduction in rates on lumber from Nakusp to Prairie Provinces and Ontario and to Quebec and Eastern Seaboard, and New Westminster and Vancouver.

51799. Mar. 9—Refusing application of D. A. Davison, St. Laurent, Man., for an order directing C.N. Rys. to put in effect reduced fares from Winnipeg to Laurentia Beach, and return.

51800. Mar. 9—Refusing application of T. D. Agnew, Fenton, Sask., that rate on grain via C.N. Rys. from Senator to Head of the Lakes be made the same as that from Fenton; and dismissing complaint of residents of district Lintlaw and Nut Mountain, Sask., regarding alleged discrimination in rates on grain from Lintlaw and Nut Mountain as compared with rate from Kelvington, Sask., over C.N. Rys. to Head of Lakes.

51801. Mar. 9—Directing C.P.R. and C.N. Rys. to establish certain rates on inedible grease and inedible tallow, in packages, in straight carloads, or in tank cars, in straight carloads, with minimum weights, when in packages, 60,000 lbs. in tank cars, actual weight but not less than 60,000 lbs., to Toronto, Montreal, and points taking Groups A and B rates in Canadian Freight Ass'n Tariff No. 4-E, C.R.C. No. 107.

51802. Mar. 14—Declaring Essex Terminal Ry. crossing of Howard avenue, Windsor, Ont., protected to Board's satisfaction.

51803. Mar. 14—Declaring C.N. Rys. crossing at mileage 52·8 Drumheller Subd'n, Alta., protected to Board's satisfaction so long as speed limitation of 10 miles an hour is in effect.

51804. Mar. 15—Rescinding Order 31513, Sept. 16, 1921, authorizing C.N. Rys. to construct spur in town of Waterloo, Ont., and directing C.N. Rys. to pay to town of Waterloo cost of replacing the sidewalk and roadway, not to exceed, however, the sum of $33.

51805. Mar. 15—Declaring New York Central R.R. crossing just north of Athelstan Station, Que., protected to Board's satisfaction.

51806. Mar. 15—Declaring C.N. Rys. crossing of Pleasant street, Truro, N.S., protected to Board's satisfaction so long as speed limitation of 10 miles an hour is in effect.

51807. Mar. 15—Relieving C.P.R. from posting certain tariffs at stations at which the population is 1,000 or less.

51808. Mar. 19—Approving toll line agreement between Bell Telephone Co. and La Compagnie de Téléphone d'Yamaska, Limitée.

51809. Mar. 19—Authorizing Ontario Dep't Northern Development to construct two highway crossings across C.P.R. wye where same crosses Sudbury-Sault trunk road at Algoma, Ont.

51810. Mar. 20—Declaring westbound traffic at Montreal and Southern Counties Ry. crossing of Salaberry street, at Chambly, Que., protected to Board's satisfaction.

51811. Mar. 20—Authorizing C.P.R. to remove their agent at Sanctuary, Sask. (caretaker to be appointed).

51812. Mar. 21—Authorizing C.P.R. to file, on ten days' notice, to become effective April 10, 1935, revised pages outlined on Exhibit "A" to its Tariff C.R.C. No. E-4737, Official Distance Table, to correct errors in mileage.

51813. Mar. 21—Approving Cornwall-Northern New York International Bridge Corporation's Tariff C.R.C. No. 2 covering tolls to be charged in respect of bridge of Ottawa and New York Ry. across St. Lawrence river between Cornwall, Ont., and Nyanda, N.Y.

51814. Mar. 21—Authorizing C.P.R. to construct spur to serve Consolidated Mining and Smelting Co. of Canada, Limited, at mileage 16·56 Kimberley Subd'n, B.C.

51815. Mar. 21—Authorizing C.P.R. to construct spur to serve Consolidated Mining and Smelting Co. of Canada, Limited, at mileage 21·05 Rossland Subd'n, B.C.

51816. Mar. 21—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, toll published in Tariff C.R.C. No. 731 filed by Temiscouata Ry. under sec. 9.

51817. Mar. 21—Approving under Maritime Freight Rates Act. sec. 3. sub-sec. 3, toll published in Tariff C.R.C. No. 732 filed by Temiscouata Ry. under sec. 9.

51818. Mar. 21—Authorizing Sask. Dep't of Highways to close highway crossing over C.P.R. in NE¼ of Sec. 1-41-24 W2M., Sask.

51819. Mar. 21—Approving location of C.P.R. proposed shelter at Blandford, Co. Oxford, Ont.

51820. Mar. 21—Refusing application of City of Toronto, Ont., for an order requiring The Consumers Gas. Co., Bell Telephone Co., Toronto Electric Comm'rs, and Toronto Transportation Commission to bear whole cost of moving their properties by reason of construction of subways under C.N. Rys. at Carlaw avenue and Gerrard street; and directing that, as forming part of total cost of the work, the said public utilities be reimbursed by City of Toronto for expenses incurred and paid by them in the removal and replacement of their facilities necessitated by the work involved in location and construction of said subways.

51821. Mar. 21—Rescinding Order 51578, Dec. 10, 1934, providing that Alexander Sawmills, Ltd., shall indemnify the Government of B.C. in respect of personal injury to persons using bridge over high water channel of Nechako river, at Prince George, B.C.—Canadian National Rys.

51822. Mar. 23—Authorizing C.N. Rys. to construct highway diversion in SW¼ of Sec. 3-36-9 W2M., and to close east and west road allowance between Sec. 34-35- and Sec. 3-36-9 W2M., near Lintlaw, Sask.

51823. Mar. 23—Authorizing Rural Mun. of Hillsburg, Man., to construct crossing over C.N. Rys. on east and west ¼ of Sec. 34-25-27 W1M., Man.

51824. Mar. 25—Directing Blandford Telephone Co. to construct its wires across C.N. Rys. at Lemieux, Que.

51825. Mar. 23—Authorizing Ontario Dep't Highways to construct highway crossing over C.P.R. on surveyed road running east and west through the centre of Sec. 15-38-18 W2M., Sask.

51826. Mar. 27—Authorizing C.P.R. to use and operate bridge No. 19·9 over Head Race at Shawinigan Falls, Que.

51827. Mar. 30—Approving Supp. "E" to Express Classification for Canada No. 8, subject to certain additions.

51828. Apl. 1—Approving plans entitled "Details of Subway under Michigan Central R.R. for Harry Oakes on Tp. Lot 190, Tp. Stamford, Co. Welland, Ont.

51829. Mar. 29—Declaring Canadian National Rys. crossing at mileage 52·8 Drumheller Subd'n, Alta., protected to Board's satisfaction.

51830. Mar. 29—Authorizing Midland Coal Mining Co., Ltd., to construct three entries underneath C.N. Rys. at Midlandvale, Alta.

51831. Mar. 29—Amending Order 51791, Mar. 6, 1935, by striking out words "proposed standard shelter and platform" in preamble and operative parts and substituting therefor the word "station"—C.N. Rys. shelter and platform at Douglastown, Que.

51832 Apl. 1—Approving Buffalo and Fort Erie Bridge Authority Tariff C.R.C. No. A-3 covering tolls to be charged for use of Peace Bridge between Fort Erie and Buffalo.

51833. Apl. 3—Authorizing C.P.R. to construct spur to serve Regal Coal Co., Ltd., at Kneehill, Alta.

51834. Apl. 3—Authorizing Ont. Dep't of Highways to construct overhead crossing over C.P.R. in Lot 13, Con. 1, Tp. Oso, Co. Ontario, Ont.

51835. Apl. 3—Authorizing C.N. Rys. to cancel, on five days' notice, but not later than 12 o'clock midnight, Apl. 19, 1935, Tariff C.R.C. No. E-2235, covering reduced rates on hay for relief purposes when consigned to stations in Nova Scotia.

51836. Apl. 3—Authorizing Dominion Atlantic Ry. to cancel, on five days' notice, but not later than 12 o'clock midnight, Apl. 19, 1935, Tariff C.R.C. No. 954, covering reduced rates on hay for relief purposes when consigned to stations in Nova Scotia.

51837. Apl. 4—Authorizing Nova Scotia Dep't of Highways to improve grades at crossing over C.N. Rys. at Onslow, N.S.

51838. Apl. 4—Directing C.N. Rys. to establish and maintain sight line in northeast angle of crossing just east of Pfeffer's Station, Ont.

51839. Apl. 3—Directing that 40 per cent of cost of installing wigwag signal, not exceeding $400, at crossing at Talbot street, St. Thomas, Ont., be paid out of Railway Grade Crossing Fund—C.P.R.

51840. Apl. 4—Requiring C.N. Rys. forthwith and until Sept. 1, 1935, to appoint and maintain a caretaker at Zenon Park Station, Sask.

51841. Apl. 4—Directing Norman McClung to remove pine and fruit trees obstructing view at New York Central crossing of Provincial Highway No. 3, 3·51 miles east of Canfield Jct., Ont., the New York Central R.R. to pay said Norman McClung the sum of $260 as compensation.

51842. Apl. 4—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tariffs filed by C.N. Rys. under sec. 3.

51843. Apl. 6—Declaring Canadian National Rys. crossing of 48th Avenue, Lachine, Que., protected to Board's satisfaction.

51844. Apl. 5—Declaring C.P.R. crossing about 1¾ miles east of Current River, Ont., protected to Board's satisfaction.

51845. Apl. 8—Approving plans showing C.P.R. standard high trestle for Cooper's E-60 loading.

DEC 4 1935

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXV | Ottawa, May 1, 1935 | No. 3

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Application of the Canadian Pacific Railway Company for ruling of the Board concerning reasonableness of charges on traffic interswitched between points of interchange and team tracks beyond four miles therefrom.

File No. 6713.241

RULING

By the Board:

It is unnecessary to set out and analyse at length all that is contained in the voluminous submissionss, as these have been interchanged between the parties. After giving careful consideration to all that is contained in said submissions, the Board finds that, for the movement of carload traffic between points of interchange and team tracks beyond four miles therefrom, charges in excess of the class rates provided for local switching movements (where no lower specific local switching rate is published) are unreasonable. Reasons for reaching this conclusion may be briefly stated.

(1) Concerning the question raised of one company being compelled to permit the use of its facilities by another, this principle was determined and dealt with in the Board's judgments *re* general interswitching and will not be here repeated.

(2) It is alleged the object of the application is to enable the applicant company to secure a more beneficial participation in certain competitive traffic. It is not apparent why the amount of absorption should have a bearing on this point. The situation, as it concerns the competitive shipper, is in no way changed and it must be assumed that solicitation and service influence the routing of such competitive traffic; certainly, it is not a question of rate difference.

(3) Both parties make reference to clause 3 of Memorandum of Agreement arrived at October 24, 1918, reading:—

> "Railway companies to amend their local switching tariffs to provide that the local switching tolls between private sidings shall not be exceeded on traffic to and from transfer points with connecting lines for distances over the four miles covered by the interswitching order."

They take opposite views as to the proper interpretation thereof. Unfortunately its wording is somewhat ambiguous and there is nothing in the Board's records

that is conclusive or specific with reference thereto. Without expressing any decision, it could be argued that, as this Memorandum of Agreement related to the General Interswitching Order, which issued two days later, and inasmuch as the latter covered both private sidings and team tracks, the word "traffic" is sufficiently general to apply to " traffic " both to and from private sidings and team tracks over the four miles covered by the interswitching order. It is stated that, in practice, the local switching rates were charged on such traffic for about twelve years following the issuance of the order, although provision therefor was not contained in the tariffs.

(4) In the case reported in Volume 11, Board's Judgments and Orders, p. 147 and p. 163, it was there contended by the company, as here, that the standard mileage road haul scale of class rates should apply. The Board held that the words " ordinary published rate," as contained in section 14 of General Order No. 252, be construed to mean the rate that would be charged for the same movement as a local switching and not an interswitching operation. There was there involved traffic falling within the provisions of the interswitching order. At the same time, there was a principle and decision there reached which is equally applicable to the present issue.

(5) It is alleged that " the local switching rates arose out of special industrial conditions and are influenced by competitive trucking services." This is a fact as to specific local switching rates published, but not as to local switching class rate scales. The companies at first proposed the standard class rate scales for application to local switching movements not specifically provided for, but the matter was adjusted by provision for the lower scales now published.

(6) Prior to March 15, 1918, the standard mileage class rates were 8 cents first class for 5 miles; 10 cents for 10 miles; and 12 cents for 15 miles. By Order in Council P.C. 1863, dated July 27, 1918, these rates were advanced to 24 cents first class solely for the reason that General Order No. 28 of Director General of United States Railroads McAdoo provided a minimum scale of 25 cents first class in the United States. Concerning this, the Interstate Commerce Commission stated in 58 I.C.C., 254:—

> " We have not on the record any explanation of the underlying basis of the minimum class scales . . . it is our understanding that these maxima were imposed as a revenue measure."

The minimum standard mileage scale is a maximum toll and actually applicable with respect to an infinitesimal amount of traffic. Lower scales are in force for many commodities. It is the maximum road haul scale contemplating the railway supplying the car and performing terminal service at both point of origin and destination. It is not an appropriate, or reasonable, scale for application where the railway does not supply the car and performs only one terminal service. Further, the service here performed may be compared with a joint line movement and the maximum standard mileage class rates are, of course, much higher than any reasonable division of a joint rate.

(7) For distances within four miles, under the General Interswitching Order, the toll of the terminal carrier on team track traffic is 2 cents per 100 pounds, which is much below the local switching class rate scales. We can find no grounds for holding that rates much higher than the local switching class rate scales are reasonable, or justified, for distances beyond four miles.

The Board considers that tariffs should be amended in accordance with this finding. If issuance of an order is necessary to accomplish this, it will issue upon application of either party.

Ottawa, Ontario, March 4, 1935.

In the Matter of the Applications of the United States and Canadian Carriers re *International Freight Rates between Points in Canada and Points in the United States.*

File No. 39422

By the Board:

In a report and order dated March 26, 1935, in a proceeding before it entitled Emergency Freight Charges, 1935, Ex Parte No. 115, in the Matter of Increases in Freight Rates and Charges, 1935, the Interstate Commerce Commission granted carriers operating in the United States of America certain increases in rates and charges, including international rates so far as they are subject to the jurisdiction of the Commission, as set out in the report of said commission made part of its order. Such increased rates were authorized to become effective April 18, 1935, and to expire June 30, 1936, unless sooner cancelled or extended.

The details of the charges authorized by the Interstate Commerce Commission are set out in appendix "A" to its report. Briefly, the principal feature thereof, so far as concerns international freight traffic, is an increase on carload traffic of 7 per cent of the total line-haul transportation charges, subject to maximum increases on various commodities of 1, 2, 3, 4 and 5 cents per 100 pounds, as set out therein. No increased charges are authorized on grain, flour, mill products, hay, straw, cotton, fruits, vegetables, milk, pulpwood, lumber (except butternut, cherry, dogwood, holly, ironwood, lancewood, Spanish cedar and walnut), fertilizers, cattle, calves, sheep, goats and hogs, etc. The increase on international shipments of coal, anthracite and bituminous, will be 15 cents per net ton.

The United States and Canadian carriers made applications to the Board dated April 8 and 9, respectively, to increase international freight rates and charges between points in Canada and points in the United States, effective on the same date, namely, April 18, 1935, to the extent set forth in the report of the Interstate Commerce Commission as modified by the carriers' applications, namely:—

> Newsprint paper rates from the Grand Mere Group to be advanced 7 per cent, with a maximum of 3 cents per 100 pounds, the arbitraries not to be increased from points taking arbitrary differentials over the Grand Mere Group, as set out in the Board's Order No. 50913 of April 5, 1934.
>
> Less than Carloads: Rates on traffic to and from Official Classification Territory to be advanced in accordance with Part 1, Section "B," Clause 1, of Appendix "A"; for application on traffic to and from Western Trunk Line Territory as defined in Agent G. C. Ransom's Tariff No. 18-B, C.R.C. No. 374, I.C.C. No. 66, rates to be advanced in accordance with Part 1, Section "B," Clause 2, of Appendix "A;" for application to and from United States Transcontinental Territory, rates to be advanced in accordance with Part 1, Section "B," Clause 3, of Appendix "A."
>
> Stop-off, reconsigning, diversion and other transit, back-haul or out-of-line charges on traffic from United States points to United States points through Canada, to be advanced 10 per cent where said services are performed at points in Canada, except—that no increase to be made in such charges where no increase is authorized in the line-haul charge.

Upon it appearing that prompt action in this matter was necessary, the Board, yesterday, sat in conference with representatives of the Canadian carriers, the Canadian Manufacturers' Association, the Toronto Board of Trade and the Montreal Board of Trade. It was represented to us that, in the event of approval of the applications, the increased rates thereby provided for will be subject to the same basis of divisions between Canadian and United States carriers as governs the present international rates; that, if we denied the appli-

cations, or suspended tariffs filed on legal notice providing for such increases, the United States carriers would adopt the same method of tariff publication as followed in connection with increased charges authorized by the Interstate Commerce Commission in Ex Parte No. 103, which became effective January 4, 1932, for a temporary period. In the case last cited, the United States lines issued a so-called master tariff setting out the increased charges authorized and, on the face of the tariff, it was stated:—

> "This tariff is applicable only in connection with tariff publications making specific reference to this tariff and to the extent indicated in such tariff publications."

On page 3 thereof, item 35 read as follows:—

> "(*a*) Where freight is transported from a point in the United States through Canada or Mexico to a point in the United States, the emergency charges will be those provided in this tariff applied to the transportation charges assessed, under rates which are subject to this tariff, and shall accrue to carriers within the United States.
>
> "(*b*) Where freight is transported from a point in the United States to a point in Canada or Mexico, the emergency charges will be those provided in this tariff applied to the transportation charges assessed, under rates which are subject to this tariff. Such emergency charges shall be prepaid at the origin point in the United States and shall accrue to carriers within the United States.
>
> "(*c*) Where freight is transported from a point in Canada or Mexico, to a point in the United States, the emergency charges will be those provided in this tariff applied to the transportation charges, assessed under rates which are subject to this tariff. Such emergency charges shall be added to the transportation charges and collected by the delivering carrier, and shall accrue to the carriers within the United States."

A special supplement to tariffs was issued by United States lines, effective the same date, stipulating that "from, to, or between points in Canada, on the one hand, and points in the United States, on the other hand, charges resulting from the rates in tariffs listed on pages 2 and 3 of this supplement are subject to the provisions of tariff of emergency charges, Freight Tariff No. 513, I.C.C. No. 2493, issued by B. T. Jones, Agent." Then, on pages 2 and 3, were listed by I.C.C. number only, various international tariffs applying between points in Canada and points in the United States. The two schedules last referred to were not filed in Canada, but only in the United States, but these schedules, as well as the international tariffs listed, were all filed with the Interstate Commerce Commission in conformity with the provisions of the Interstate Commerce Act and the rules of that commission with respect to the publication and filing of tariffs. The result was that the increased charges in question were collected on international freight between Canada and the United States in the same manner as if they had been incorporated in the international freight tariffs, but the increased charges were collected in the United States and accrued to the United States lines. The Canadian carriers had no participation whatever in the increased charges.

All the parties yesterday before us, representing both the carriers and the shippers, agreed that it is impracticable to apply the increased charges authorized in Ex Parte No. 115 confined to the proportions of the through international rates accruing within the United States, because, amongst many other things that might be mentioned, the proportions, or divisions, of the total joint international rates are not published and vary as to different international junction points between the same points of origin and destination, consequently, the same method of publication as followed in 1932 would be forced upon the United States lines

by our action in denying the applications, because it is the only practicable method of applying the increased charges authorized to the international rates, except the alternative of the United States lines withdrawing from participation in joint through international rates, resulting in the combination of the local Canadian rates to and from the international boundary plus the rates within the United States to and from the international boundary, the latter increased in accordance with the provisions of the commission's order in Ex Parte No. 115, which would be ruinous to Canadian shippers and receivers as it would involve rates very much in excess of the present through international rates increased in accordance with the Commission's decision in Ex Parte No. 115. Canadian shippers and receivers desire, above all other considerations, that the continuity of joint through rates between Canada and the United States shall be preserved.

Summarized, the situation is that the granting or denial of the applications before us will make no difference in the amount of the charges to be paid by Canadian shippers and receivers of international freight traffic. Our denial would have the result that, as in 1932, the United States lines would collect and retain the whole amount of the increased charges, the Canadian carriers would receive no portion thereof and be deprived, by our action, of a very substantial revenue during the period the increased charges are in force.

Recognizing and admitting this situation, the representatives of the shippers' organizations hereinbefore named expressed the view that the Board should approve these applications.

The Board, upon consideration thereof, issued its General Order No. 536, dated April 15, authorizing:—

That the proportions of through rates and charges between the United States and Canada, in both directions, in effect at the date of this order, accruing within Canada, may, by general order or blanket supplement to existing tariffs, be increased to the extent that the through rates and charges shall conform to the increases authorized by the said order of the Interstate Commerce Commission.

That the through rates and charges so increased may be published and filed to become effective on or after April 18. 1935, upon one day's notice, subject to the proviso that the resulting rates will in all respects be subject to complaint or investigation and to determination as to the lawfulness of schedules, rates, or charges as provided by the Railway Act.

Ottawa, Ontario,
April 16, 1935.

Applications of the United States and Canadian carriers re *international freight rates between points in Canada and points in the United States.*

File No. 39422

JUDGMENT

Garceau, Deputy Chief Commissioner:

I would agree with the present order if all words after "in all respects" in the third last line of the last paragraph were struck out and the following substituted therefor: "be subject de plano, within thirty days of the publication of the present order, to complaint or investigation and to determination as to the opportunity or the lawfulness of schedule rates or charges, as provided by the Railway Act (section 59)," the last paragraph reading as follows:—

> "That the through rates and charges so increased may be published and filed to become effective on or after April 18, 1935, upon one day's notice, subject to the proviso that the resulting rates will in all respects

be subject de plano, within thirty days of the publication of the present order, to complaint or investigation and to determination as to the *opportunity* or the lawfulness of schedule rates or charges, as provided by the Railway Act (section 59)."

The authority of the Board to issue the present order without due notice is provided by section 59 of the Act, which says:—

"Except as herein otherwise provided, when the Board is authorized to hear an application, complaint or dispute, or make any order, upon notice to the parties interested, it may, upon the ground of urgency, or for other reason appearing to the Board to be sufficient, notwithstanding any want of or insufficiency in such notice, make the like order or decision in the matter as if due notice had been given to all parties; and such order or decision shall be as valid and take effect in all respects as if made on due notice.

(2) Any company or person entitled to notice and not sufficiently notified may, at any time within ten days after becoming aware of such order or decision, or within such further time as the Board may allow, apply to the Board to vary, amend or rescind such order or decision, and the Board shall thereupon, on such notice to other parties interested as it may in its discretion think desirable, hear such application, and either amend, alter or rescind such order or decision, or dismiss the application, as may seem to it just and right."

I am of the opinion that the actual wording of the order might limit the rights of the interested parties to file "de plano" complaints against the legality only of the order and not against its opportunity in the interest of the public.

I am dissenting with the order as presently worded.

Ottawa, April 16, 1935.

GENERAL ORDER No. 536

In the matter of the applications of the United States and Canadian carriers re *international freight rates between points in Canada and points in the United States.*

File No. 39422

Monday, the 15th day of April, A.D. 1935.

S. J. McLean, *Assistant Chief Commissioner.*
F. N. Garceau, K.C., *Deputy Chief Commissioner.*
J. A. Stoneman, *Commissioner.*
G. A. Stone, *Commissioner.*

Whereas the Interstate Commerce Commission, by its order dated Washington, D.C., March 26, 1935, has granted carriers operating in the United States of America certain increases in rates and charges, including international rates so far as they are subject to the jurisdiction of the said commission, as set out in the report of the said commission, made part of its order, to become effective April 18, 1935, and to expire June 30, 1936, unless sooner cancelled or extended;

And whereas the United States and Canadian carriers have made applications to increase international freight rates and charges between points in Canada and points in the United States to the extent set forth in the report of the Interstate Commerce Commission, as modified by the carriers' applications;

And whereas it is deemed by the Board to be expedient in the public interest that the continuity of joint through rates from points in the United States to points in Canada, and vice versa, should be preserved;

Upon hearing the representations of the Canadian carriers, the Canadian Manufacturers' Association, the Montreal Board of Trade, and the Toronto Board of Trade;

Therefore, in pursuance of the powers conferred upon it by section 325 of the Railway Act, and of all other powers possessed by the Board in that behalf,—

It is Ordered:

1. That the proportions of through rates and charges between the United States and Canada, in both directions, in effect at the date of this order, accruing within Canada, may, by general order or blanket supplement to existing tariffs, be increased to the extent that the through rates and charges shall conform to the increases authorized by the said order of the Interstate Commerce Commission.

2. That the through rates and charges so increased may be published and filed to become effective on or after April 18, 1935, upon one day's notice, subject to the proviso that the resulting rates will in all respects be subject to complaint or investigation and to determination as to the lawfulness of schedules, rates, or charges as provided by the Railway Act.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51849

In the matter of the application of the Toronto, Hamilton and Buffalo Railway Company, hereinafter called the "Applicant Company," under Section 342 of the Railway Act, for relief from posting certain tariffs at stations at which the population is 1,000 or less.

File No. 39362

TUESDAY, the 9th day of April, A.D. 1935.

S. J. McLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered and declared:

1. That the applicant company be, and it is hereby, relieved from posting tariffs to the following extent, namely:—

(*a*) That at stations at which the population is 1,000 or less, only the Canadian Freight Classification, Standard and Local Specific Class Tariffs, and such other tariffs, as are frequently used, be posted; and that all other tariffs for use of agents at such stations be posted in the office of the General Freight Agent at Hamilton, Ontario.

2. That on any rates required for occasional shipments, agents who have not the proper tariff on file may secure same by telegraph from the General Freight Agent at Hamilton, Ontario.

3. That, in the event of any tariff not on file at a station being required on account of a movement, or at the request of a shipper, such tariff shall immediately be posted and placed on file at that station.

4. That this order is subject to amendment or revision in the event such action appears necessary in the public interest.

S. J. McLEAN,
Assistant Chief Commissioner.

GENERAL ORDER No. 535

In the matter of freight tariffs filed with the Board covering traffic carried between points in the United States through Canada.

File No. 39422

TUESDAY, the 9th day of April, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Whereas the Interstate Commerce Commission, by its Order dated Washington, D.C., March 26, 1935, has granted carriers operating in the United States of America certain increases in rates and charges as set out in report of the said Commission, made part of its order;

And whereas it is deemed by the Board to be expedient that the carriers should be permitted to make effective such increased rates and charges in freight tariffs applying on traffic carried between points in the United States through Canada on the same date as such changes are made with respect to traffic moving wholly within the United States between the same points—

Therefore, in pursuance of the powers conferred upon it by section 325 of the Railway Act, and of all other powers possessed by the Board in that behalf—

It is ordered: That the carriers be, and they are hereby, permitted to publish and file such tariffs as hereinbefore described containing the increased rates and charges referred to, to become effective on or after April 18, 1935, upon one day's notice.

S. J. McLEAN,
Assistant Chief Commissioner,

GENERAL ORDER No. 537

In the matter of the General Order of the Board No. 534, dated March 27, 1935, amending the Regulations with Respect to Railway Safety-Appliance Standards prescribed by General Order No. 102, dated February 17, 1913.

File No. 11654.110

SATURDAY, the 13th day of April, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the paragraph respecting dimensions in the said General Order No. 534, dated March 27, 1935, be amended by striking out the word "tapering," in the tenth line line thereof, and substituting therefor the word "widening."

S. J. McLEAN,
Assistant Chief Commissioner.

GENERAL ORDER No. 538

In the matter of the Regulations Regarding the Inspection of Railway Steam Boilers, other than Locomotive Boilers, prescribed by the General Order of the Board No. 330, dated February 16, 1921, and proposed amendment to Rule 8 thereof.

File No. 29110.1.2.

WEDNESDAY, the 17th day of April, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading the submissions filed on behalf of the Railway Association of Canada, the New York Central Railroad Company, Sydney and Louisburg Railway Company, Northern Alberta Railways Company, Algoma Central and Hudson Bay Railway Company, Great Northern Railway Company, Wabash Railway Company, Canadian Pacific Railway Company, and the London & Port Stanley Railway Company; and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is Ordered: That the said General Order No. 330, dated February 16, 1921, be, and it is hereby, amended by striking out paragraph VIII of the regulations and substituting therefor the following, namely:—

"VIII

"Every boiler shall have at least one water gauge glass not less than six inches between the gland nuts, and the visible bottom end of glass shall be at least two inches above the fire line (which for horizontal, locomotive and upright tubular boilers of the submerged type shall be the highest point of the crown sheet or fire tube). In dry top upright tubular boilers the visible bottom end of the water gauge glass must not be located less than one-half the distance between the tube sheets measured from the bottom tube sheet.

"Where the top connection of the water gauge glass is above seven and under twenty-five feet from the floor of the boiler room, or boiler service runway, the water gauge glass and try-cock, stop and blow-down valves must be fitted with rods or chains, so that they may be operated from the floor or boiler service runway, and must be located in such a position that the water gauge glass will be in full view from the point where the rods or chains are operated. When above ten feet above the operating floor they may be of the inclined type, in cases where the vertical glass cannot clearly be seen.

"Water gauge glasses must be encased in a suitable guard in such a manner as to provide against accidents, and in such a way that the view of the water glass from the operator's location will not be obstructed. When prismatic water glasses are used guards are not required.

"Each water gauge glass shall be equipped with a cock or valve at each end, and with a blow-off or drain at the bottom end, the outlet of which shall be convenient for the operator of the plant to operate from his position on the operating floor or boiler service runway. Water gauge glasses, cocks or valves and drains shall be maintained in an operative condition, free from leaks, and shall be cleaned of scale each time boiler is washed.

"Every boiler shall have three try-cocks, the lower one to be placed in the same horizontal plane as the visible bottom end of the water gauge glass, and the other spaced equally over the visible range of the water gauge glass. On boilers where try-cocks cannot conveniently be located and operated a second water gauge glass must be used instead, and shall be independently connected

to the boiler. Try-cocks must be maintained in an operative condition, and cleaned of scale each time the boiler is washed.

"The use of water columns is optional, and where installed must be equipped with three gauge cocks and one water gauge glass located with respect to the visible bottom end of glass, as described above.

"Suitable lights shall be provided for the observation of steam gauges, try-cocks and water glasses."

S. J. McLEAN,
Assistant Chief Commissioner.

DEC 4 1935

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXV Ottawa, May 15, 1935 No. 4

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Application of the Canadian Lumbermen's Association for order of the Board disallowing competitive rail rates from British Columbia coast points to stations in Eastern Canada on lumber other than construction timber 4 inches by 4 inches and larger.

File No. 26901·62.

JUDGMENT

By the Board:

This matter has been placed before us and all relevant points developed by written submissions of the interested parties and applicant desires it disposed of upon such submissions.

The normal rail rates on lumber and timber from British Columbia coast points are 88½ and 90 cents to the Eastern Canadian points here in question in the provinces of Ontario and Quebec, except to territory North Bay and west and north thereof, and certain points in Quebec. All rates stated herein are in cents per 100 pounds. Competitive rail rates were established on construction timber 4 inches by 4 inches and larger of 60 cents to Montreal, Quebec, Sorel and Three Rivers and 70 cents to the other points in Ontario and Quebec, minimum weight 80,000 pounds. On lumber, the product of saw and planing mill plants, not further advanced in manufacture than by sawing, resawing and passing lengthwise through a standard planing machine, crosscut to length and end matched, a competitive rail rate of 75 cents was published to all points, minimum weight 60,000 pounds. The railways stated the competitive rates were established to meet water competition via the Panama canal.

In the first submission filed by applicant, it is admitted that there is water competition at Montreal, Quebec, Sorel and Three Rivers. Cost of movement by water to Montreal is shown by applicant as being 43·91 cents. It is also admitted that the cost via water to Montreal, etc., plus the rail rate thence to various destinations throughout the territory in question produces lower through rates than even the competitive rail rates in most cases. For example, applicant shows cost to Toronto so computed as being 63·91 cents.

Applicant stated it recognized that, under the provisions of the Railway Act, it is within the discretion of the railways to establish reduced rates to meet water competition; that there was no complaint concerning the com-

petitive rates on timber which is moving by water to the ports named, as well as to inland points from said ports, for the reason that Eastern Canada does not produce the larger sizes of timber in any quantity; nor was there complaint against the reduced rates on lumber to the distinct water points such as Montreal, Quebec, Sorel and Three Rivers. The complaint concerns the competitive rates on lumber to points other than the four just named and applicant contended in this respect that, out of the total quantity of lumber and timber handled in any one year from British Columbia by water to the ports mentioned, not more than ten per cent would be back-hauled by rail to destinations in Ontario and Quebec; that by far the larger portion of this back-haul traffic would be timbers 4 inches by 4 inches and larger. Certain supporting data were furnished for the year 1928 and it was stated their information indicated approximately the same results in other years.

Applicant alleged that, under such circumstances, the railways had unjustly discriminated against lumber producers in Eastern Canada, because the reduced rates had given the British Columbia producer the privilege of shipping to Eastern Canada at much lower rates on the plea of meeting water competition when actually there had not been any active water competition on this material. Applicant stated that this might not appear to be a serious disadvantage to the Eastern Canadian producer when the British Columbia producer is paying a rate of 75 cents, whereas the highest rate which the Eastern Canadian producer might have to pay was probably about 25 to 30 cents, but reference was then made to the cost of producing lumber in British Columbia being very much lower than in Eastern Canada, as well as some other considerations mentioned. Applicant stated in this connection, however:—

> "In making any mention of the cost of producing lumber as between British Columbia and Eastern Canada, we are not doing so with any misunderstanding as regards the obligation of the railways under the Railway Act to equalize the cost of production through lowered rates so that all may compete on an even keel in the same market, but, we do maintain that the railways have no right whatever to reduce the rates on this "lumber" to interior destinations of Eastern Canada, under the guise of meeting water competition when there has not been any water competition at all on certain of the material which has been given the benefit of the reduced rate and very little competition through the medium of water carriage and back haul movement on the 2-inch, 3-inch, 4-inch and 5-inch lumber and planks."

The question here raised is what does this so-called back-haul traffic amount to and of what does it consist. Applicant suggested the railways be asked to furnish a statement of the rail movement from British Columbia coast points to interior destinations in Ontario and Quebec from the date the reduced rates became effective (May 17, 1934), with a comparison of the movement during the same period in 1933, the same to show the quantity of timber 4 inches by 4 inches and larger and the quantity of 1-inch, 2-inch and 3-inch lumber, as well as the thin stock less than 1 inch in thickness.

In the first submission from the railways, they stated that, before publishing the competitive rates, they satisfied themselves that the steamers via the Panama Canal route were delivering at Eastern Canadian points considerable quantities of the smaller material, some of which went forward on arrival of the steamer to interior points by rail and some of which was reshipped later, both by rail and truck. They furnished some data covering back-haul movements, indicating a considerably larger movement thereof than shown by applicant. They alleged that a certain proportion of the larger timbers is remanufactured into smaller sizes and reshipped by rail and truck to interior points. They contended that, in view of the heavy movement by water and the existing combination of water and inland rates, the sum of which is lower than the

competitive rate, the latter cannot have a detrimental effect upon the operations of the eastern Canadian producer, as it is apparent that, in the absence of the rail rate, the proportion of shipments handled by steamers will continue to increase. They stated the detailed information requested by applicant would be obtained and submitted later, but that it would require some time, as, in the majority of cases, the size of the material is not shown on the railway shipping orders and the information would have to be obtained from shippers' records.

At this stage, the British Columbia Wholesalers' Lumber and Shingle Association filed a submission in which they took issue with the allegation of applicant concerning the small amount of lumber shipped by water and back-hauled to interior points. They asserted that, with the steamers operating via the Panama canal route, British Columbia coast producers found they could reach certain eastern Canadian markets at about one-third of the existing normal rail rates and a tremendous volume of this traffic was diverted from the rail to the water route because of the substantial freight savings; that port distributors in eastern Canada installed facilities for handling, resawing, remanufacturing, planing, drying and warehousing British Columbia coast lumber in all sizes and grades; that, in giving certain data of full cars back-hauled, applicant had overlooked the large distribution by trucks, as well as less than carload rail shipments. They contend it is impossible to indicate the complete total of back-haul movement. Some of the steamship companies formerly handling the traffic are not now in operation; large lumber companies shipping by water are not members of their association. Whereas applicant had shown approximately 20 cars of lumber back-hauled in 1931, this association stated they had actual records of over ten times that amount back-hauled during the year in question and these records were only part of the total actual back-haul movement. They did not furnish details thereof. They stated:—

> "The next decade we believe will witness an important era in construction of all kinds. The railways need all the long-haul business that can be secured. Events of the last ten years have shown that British Columbia will ship vast quantities of forest products to the East, regardless of rail rates. This issue is not one of *volume* of lumber moving but simply *how* the lumber shall move."

The movement of lumber and timber by water is very substantial, applicant showing that it amounted to 288 million feet for the six-year period 1928-1933 inclusive. Corresponding figures of rail movement are not of record.

Following the filing of some additional submissions, which were exchanged between the parties, the railways submitted considerable data concerning water shipments from British Columbia coast points to St. Lawrence river ports, which will be briefly summarized.

Year 1931

It is shown that, in this year, the Canadian Government Merchant Marine steamers via the Panama canal during the season of St. Lawrence river navigation handled the following quantities of lumber which were back-hauled by rail from Montreal:—

	Feet
Less than 1 inch thick	50,553
1 inch thick and over but not including 2 inches	110,784
2 inches thick and over but not including 3 inches	967,142
3 inches thick and over but not including 4 inches	377,855
(Equal to approximately 75 cars)	1,506,334

Year 1932

The Canadian Government Merchant Marine steamers handled the following quantities of lumber, which were back-hauled by rail from Montreal:—

	Feet
Less than 1 inch thick	177,791
1 inch thick and over but not including 2 inches	786,438
2 inches thick and over but not including 3 inches	1,134,904
3 inches thick and over but not including 4 inches	707,560
(Equal to approximately 140 cars)	2,806,693

During this season, in addition to the Merchant Marine vessels, it is stated there were at least four other sailings, three of the steamers being operated by the Canadian Transport Company, a subsidiary of H. R. MacMillan Export Company, and one by the Kingsley Navigation Company, to St. Lawrence ports. There was also submitted a statement covering shipments from the Coast Sawmills, Limited, in May, September and October, which shows the specifications and destinations of lumber, boards and shiplap of various kinds and sizes of material.

The British Columbia Wholesalers' Lumber and Shingle Association submitted detailed statements of British Columbia timber and lumber shipped by vessel to eastern Canada and back-hauled by rail to interior destinations in Ontario and Quebec during 1932. The date of sailing and name of vessel were given and, from the eastern Canadian port, car numbers, destinations, etc., were shown. The statements cover shipments made by three companies only and the Association states the figures by no means represent the total back-haul movement. A recapitulation of the statement shows a total of 3,866,308 feet of lumber less than 4 inches by 4 inches back-hauled, which is equal to approximately 193 cars.

Years 1933 and 1934

For these years, the information furnished is fragmentary. The work and difficulty involved in taking out complete and detailed figures has already been referred to herein. However, it is indicated that there is an active and effective movement of small size lumber by water to St. Lawrence River ports and thence by truck and rail to interior points.

In compliance with applicant's request, hereinbefore referred to, for a statement of the rail movement from the date the reduced rates became effective, the following statements were submitted by the railways, showing movement of lumber and timber, segregated by sizes, for the period May 17th to August 31st, 1933, inclusive, billed at the normal rates, compared with the movement during the same period in 1934, both at the competitive rail rates and at the normal rates, the latter being included to make an exact comparison with the 1933 period, some of the traffic in the 1934 period being still subject to the higher rates on account of cars including articles not subject to the competitive rail rates.

COMPARATIVE STATEMENT SHOWING TOTAL QUANTITY OF *LUMBER AND TIMBER*, IN BOARD FEET, SHIPPED FROM BRITISH COLUMBIA COAST POINTS LOCATED ON CANADIAN PACIFIC RAILWAY, ESQUIMALT AND NANAIMO RAILWAY, VANCOUVER AND LULU ISLAND RAILWAY, ALSO BRITISH COLUMBIA ELECTRIC RAILWAY TO DESTINATIONS IN ONTARIO AND QUEBEC (EXCEPT MONTREAL, QUE.) DURING PERIOD MAY 17TH TO AUGUST 31ST, 1934, INCLUSIVE, BILLED AT RATES PUBLISHED IN C.F.A. TARIFF 163, C.R.C. 205 AND C.F.A. 113-A, C.R.C. 36, ALSO DURING PERIOD MAY 17TH TO AUGUST 31ST, 1933, INCLUSIVE, BILLED AT RATES PUBLISHED IN C.F.A. TARIFF 113-A, C.R.C. 36.

—	Quantity in Feet Board Measure				
	1934			1933	Increase
	Tariff C.F.A. 163	Tariff C.F.A. 113-A	Total	Tariff C.F.A. 113-A	
Less than 1 inch thick	1,788,261	586,367	2,374,628	1,491,967	882,661
1 inch thick and over but not including 2 inches thick	3,627,737	662,146	4,289,883	2,457,075	1,832,808
2 inches thick and over but not including 3 inches thick	1,430,275	113,587	1,543,862	792,629	751,233
3 inches thick and over but not including 4 inches thick	241,176	52,171	293,347	88,127	205,220
4 inches by 4 inches and over	727,611	130,352	857,963	533,052	324,911
Totals	7,815,060	1,544,623	9,359,683	5,362,850	3,996,833

COMPARISON OF MOVEMENT OF LUMBER TO ONTARIO AND QUEBEC (EXCEPT MONTREAL) FROM BRITISH COLUMBIA COAST POINTS TAKING VANCOUVER AND PRINCE RUPERT RATE BASES, VIA CANADIAN NATIONAL RAILWAYS.

—	Quantity in feet board measure				
	1934—May 17 to August 31			1933—May 17 to August 31	
	At water-competitive rates. C.F.A. No. 163, C.R.C. No. W-205	At normal rates. C.F.A. No. 113-A, C.R.C. No. W-36	Total	At normal rates. C.F.A. No. 113-A, C.R.C. No. W-36	Increase 1934 over 1933
Less than 1 inch thick	702,484	258,310	960,794	988,716	(d) 27,922
1 inch but less than 2 inches thick	1,314,683	500,240	1,814,923	1,723,594	91,329
2 inches but less than 3 inches thick	767,144	83,590	850,734	390,886	459,848
3 inches but less than 4 inches thick	93,935	14,885	108,820	84,601	24,219
4 inches by 4 inches	1,008,053	64,378	1,072,431	326,568	745,863
Totals	3,886,299	921,403	4,807,702	3,514,365	1,293,337

(d) Decrease.

It will be noted that the total rail movement from May 17 to August 31, 1934, amounted to 14,167,385 feet. Applicant stated the movement by water up to August 17, 1934, amounted to approximately 22 million feet.

When unjust discrimination is alleged, it is the duty of the Board to determine, in the light of the particular facts and the various circumstances found to exist in each case, whether there is unjust discrimination within the provisions of the Railway Act. Citations from numerous judgments of the Board defining the considerations which have a bearing on this point and to be applied, in so far as they are applicable to the facts developed in the case being dealt with, will be found in Volume 24, Board's Judgments, Orders and Rulings, p. 344 at p. 350 *et seq.*

Applicant's allegation concerning the rail competitive rates creating an unjust discrimination against lumber producers in Eastern Canada consists merely of an assertion that the effect of such rates is to deprive the Eastern Canadian

mills of certain business in their natural market in Ontario and Quebec and hand it over to the British Columbia producers. There is no supporting evidence before us on this point. In none of the submissions of applicant is it proven that lumber producers in Eastern Canada are adversely affected by the rates published *by the railways,* nor has any evidence been submitted demonstrating that such rates have created a situation of unjust discrimination or undue preference within the meaning of the Railway Act.

Upon what is before us on this record, it is plain that, for some years past, the railways have seen the bulk of this traffic, which they formerly hauled all rail, diverted to the water route. In 1934, they established the competitive rail rates already set out herein. It is shown, and admitted by applicant, that the freight cost via water to St. Lawrence river ports, plus the rail rate thence to various destinations throughout the territory in question, produce lower through rates than the competitive rail rates. Clearly, therefore, the competition (described by applicant as discrimination) between British Columbia and eastern Canadian lumber producers, in so far as it is affected by freight costs, has been created by the water routes rather than by the railways and it would not be removed by any direction which we might make with respect to the rail rates. In the absence of publication of the competitive rates by the railways, applicant would have no grounds upon which to approach the Board alleging an unjust rate discrimination, but it is not apparent that their position would thereby be in any way different from what it is to-day. The lower rates via unregulated transportation agencies existed before competitive rates were published by the railways and it is not shown that the latter have subjected applicant to any detriment that did not exist, actually or potentially, prior to their publication. The railways cannot rightly be charged with producing discrimination unless it can be demonstrated that it was created by their action and they could, by their own unaided acts, remove it. We have no such showing here.

The Railway Act contains specific provisions authorizing a reduced charge on traffic handled to meet competitive conditions without necessitating corresponding reduction in normal rates and it has been held in numerous decisions of the Board that comparison as between competitive rates and normal rates is no evidence of the unreasonableness of normal rates *per se.* When the railways can secure, under conditions such as here existing, additional traffic which may be handled at less than average unit costs, or without the use of additional transportation facilities, rates substantially lower than those which would be maximum reasonable tolls, but which would be reasonably compensatory on the traffic invoved, result in some contribution, over and above out of pocket costs, to the general overhead expense of the railway.

The application must be refused.

Ottawa, Ontario,
March 27, 1935.

Application of the Canadian Lumbermen's Association for Order of the Board disallowing competitive rail rates from British Columbia coast points to stations in Eastern Canada on lumber other than construction timber 4 inches by 4 inches and larger.

File No. 26901.62.

JUDGMENT

Garceau, Deputy Chief Commissioner (Dissenting).

I cannot concur in the theory implied in the report of our Chief Traffic Officer that, because the lumber industry of Eastern Canada is already jeopardized by competition from British Columbia, on account of the cheap water rates

via Panama canal, it is immaterial whether their plight is increased by adding low rail rates to the advantages of their competitors, not only to real competitive points but over a great part of the territory of Ontario and Quebec.

The applicants are satisfied that the railway grant competitive rates to Group 1, construction timber 4 inches by 4 inches and larger, to any point, because this timber is not produced in Eastern Canada.

They are still willing to admit that the railways may grant competitive rates from the western coast to certain specified points in Eastern Canada (Montreal, Quebec, Three Rivers and Sorel), for the lumber classified in Group 2, "being lumber the product of saw and planing mill plants, not further advanced in manufacture than by sawing, resawing and passing lengthwise through a standard planing machine, cross cut to length and end matched"; but they strenuously object to these competitive rates applying to inland destinations in Quebec and Ontario.

It is beyond doubt that the low rates complained of seriously injure their trade; the following citation from the Chief Traffic Officer's report does not justly establish the facts:—

> "Applicant's allegation concerning the rail competitive rates creating an unjust discrimination against lumber producers in Eastern Canada consists merely of an assertion *that the effect of such rates is to deprive the Eastern Canadian mills of certain business in their natural market in Ontario and Quebec and hand it over to the British Columbia producers. There is no supporting evidence before us on this point.*"

Proof of the applicants' contention lies in the fact that, although the all-rail rates are still higher than the combined water route and back-haul charges, the railways can secure additional traffic on account of these all-rail rates. They are a great advantage given to the eastern dealers and British Columbia coast producers, at the expense of the eastern producers.

Railway transportation, even when more costly than water transportation, is often preferred because goods are delivered at destination; there is no unloading and reloading, handling of any kind; the dealer is not obliged to carry a heavy stock as he has the opportunity to replace same; moreover, owing to quick delivery, he may carry a minimum stock, even only samples. The absence of this quick, regular and direct delivery would give opportunities to Eastern producers.

The railways were not the first to create the competition complained of but, in order to secure additional traffic, they increased it de facto and potentially; they spread it to localities to which the water route was of no benefit, thereby giving greater opportunities and facilities to Eastern dealers, with a minimum cash investment or capital outlay.

It cannot be questioned that the actual competitive rates on lumber of Group 2 add intensively and substantially to the competition brought about by the water route, to the Eastern Canada lumber industry, one of the most important of that section of the country, giving employment to thousands.

Is it in the interest of the public for the railways to jeopardize such an industry for the purpose of securing traffic?

I do not believe that Parliament of Canada ever contemplated that in granting the privilege of competitive rates to the railways they would use them to the detriment of public interest, in the present instance, the Eastern lumber industry mentioned in Group 2, its employees, the general trade of that part of the country which is and will be adversely affected by this ruinous competiton.

Competitive rates in this instance are justified when they are given to Group 1, timber 4 inches by 4 inches and larger, because the railways are keeping to themselves a volume of traffic and at the same time are giving the

British Columbia lumbermen the means of shipping to the Eastern markets a product which is not produced in that locality. But, when for their personal benefit, they extend these competitive rates to lumber which is sold in direct competition with the Eastern product on a market already amply supplied, they act against the spirit of the law and it is no excuse to say that a competitor already carried such commodities at a lower rate then they do. Two wrongs never make a right.

This policy of the railways ignores the fundamental principle which ought to govern their relations with the public: "Service."

"And the public whose interests are to be considered is not the general body politic or the interest of shippers over the country as a whole; the public intended is the public of the locality or district affected and any considerable slice of the population as a whole as opposed to an individual or association of individuals will satisfy the description." (Vol. 17 C.R.C., p. 150.)

It must be kept in mind that the railways are for the public and not the public for the railways.

Every railway rate is subject to the approval of the Board and the Board must not, in my opinion, sanction or permit any rate or toll which would be detrimental to a large section of the country, even though it benefits the railways.

. . . . . .

With due deference for previous decisions of the Board, I refuse to admit that the Railway Act gives discretion to the railways to issue tariffs, under the caption of competition, that would be detrimental to the public.

The Parliament of the country, when enacting laws of general application necessarily intends that they be applied and interpreted to the benefit of the country as a whole and whenever it appoints an authority to see to the fulfilment or application of the law, it delegates its powers and authority to such body in order that the aim of the law, the welfare of the country as a whole, be attained.

. . . . . .

The policy of the railways on competitive rates is often uneconomical, against public interest this is more evidently demonstrated when we consider that, while it gives to the British Columbia coast industry the advantage of the eastern Canadian markets, it refuses the same rate advantage to the inland British Columbia lumber industry, though nearer the Eastern Canadian markets.

The coast industry has water route facilities to the markets of the world; because it has such advantages, it is favoured by competitive rates when the same industry located inland, having no other shipping facilities than the railways, must pay a higher freight rate, which rate becomes prohibitive owing to the lower rail rate granted to the coast industry.

. . . . . .

The annual report of the Canadian National Railways' system for the year ending December 31, 1934, says, at p. 3:—

> "Activities of unregulated competitors have continued and increased. In addition to the direct laws of traffic these activities have necessitated the establishment of water and motor truck competitive rates, thereby seriously affecting our revenues."

What created and still creates this motor competition?

Cheap or competitive rates are granted to sections of the country provided with proper highways but refused to adjacent localities not provided with such facilities. Is not such a policy an inducement to the public to build highways, to buy trucks, being assured that, in doing so, the railways will then give competitive or cheaper rates which the industry, agriculture, need to compete with the localities already favoured by cheap rates?

Would it not be more logical and practical for the railways to prevent the creation of such competition by immediately granting such cheap rates and thereby keeping the whole traffic, saving expenses to the public?

I could quote numerous instances of this queer policy.

In the western provinces, whenever highways establish communication between the two railways, even if twenty miles apart, a competitive or lower rate is issued, but in the absence of such highway facilities, even when both railways are distant only seven miles, these cheap rates are refused (Lintlaw and Nut Mountain, Sask. vs. C.N.R., and T. D. Agnew, Fenton, Sask., vs. C.N.R., Vol. 25, Board's Judgments, Orders, Regulations and Rulings, p. 10).

The Canadian National Railways, Temiscouata Railway Division, granted a 3½ cents per 100 pounds rate on cordwood between Ste. Rose and Riviere-du-Loup but refused the same rate from Padoue to Riviere-du-Loup, because in the first place there was motor truck competition and none from Padoue to Riviere-du-Loup, although this high rate was prohibitive precisely owing to the lower rate granted to another section. The application had been made in order to give work to lumberjacks who, otherwise, would be on relief.

Can the railways complain of motor competition when, by their policy on competitive rates, they provoke the public and induce the establishment of motor competition? As aforesaid, this short-sighted policy, nefarious to the public and the railways, is followed because the railways ignore their proper function: *Service.*

The report of our Chief Traffic Officer, in its conclusion and when it refers to the decisions reported in Volume 24, Board's Judgments, Orders, Regulations and Rulings, pp. 344, 350 *et seq.*, approves this policy of the railways.

With due deference for these previous decisions, if we consider the experience of the last few years, the present conditions, and the possibilities of the future, they cannot be considered final criteria of the interpretation of the Railway Act and an absolute direction for the decisions of the Board.

I rather agree with the opinion of an informed authority: "that the freight rate structure in Canada is antiquated; it is in a more or less chaotic condition and I believe there will have to be something in the way of a complete investigation into the freight rates in the near future with the purpose of wiping out some of the chaos which exists and putting the freight rates in a more equitable condition."

Changed conditions require different decisions and in any decision the dominant factor should be, in my opinion, public weal rather than the interest of the railways, believing that such policy would be more profitable to the railways themselves and would be in accordance with the spirit of the Railway Act and of Order in Council P.C. 886 (see Vol. 17, Board's Judgments, Orders, Regulations and Rulings, p. 132):—

> "The Committee therefore advise that the Board be directed to make a thorough investigation of the rate structure of railways and railway companies subject to the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rate structure which will under substantially similar circumstances and conditions be equal in its application to all persons and localities, so as to permit the freest possible interchange of commodities between the various provinces and territories of the Dominion and the expansion of its trade both foreign and domestic, *having due regard to the needs of its agriculture and other basic industries.*"

I lay stress on this part of the quotation, "*having due regard to the needs of its agriculture and other basic industries*"; that is to say, the consideration of public interest first, not the whims or supposed interest of the railways; also, to this other part of the Order in Council:—

> "The Committee are of the opinion that the policy of equalization of freight rates should be recognized to the fullest possible extent as

being the only means of dealing equitably with all parts of Canada . . . a thorough and complete investigation of the whole subject of railway freight rates in the Dominion should be carried out *by the Board of Railway Commissioners, a body constituted by Parliament with full powers under Statute to fix and control railway rates.*"

These dispositions of the Order in Council put public interest first and determine the full authority of the Board to enforce that policy on the railways.

Section 52 of the Railway Act gives legal force to that order. It reads as follows:—

> "The Governor in Council may at any time in his discretion . . . vary or rescind any order, decision, rule or regulation of the Board whether such order or decision is made *inter partes* or otherwise and whether such regulation is general or limited in its scope and application, and any order which the Governor in Council may make with respect thereto *shall be binding upon the Board and all parties.*"

. . . . . .

In Volume 20, Board's Judgments, Orders, Regulations and Rulings, at page 236, we read:—

> "The powers which are conferred upon the Board are regulative and not managerial. It is not the Board's function, as delegated by Parliament, *to make rates to develop business,* but to deal with the reasonableness of rates, either on complaint or of its own motion." (British Columbia News Co. vs. Express Traffic Assoc., 13 Canadian Railway Cas., 176.)

The above quotation is one of the authorities mentioned in the report and which embodies the policy generally followed.

I submit respectfully that it contradicts subsection 5 of section 325 of the Railway Act; also, the Order in Council above referred to, when it says: "It is not the Board's function to make rates to develop business," because this order directs the Board of Railway Commissioners, the body constituted by Parliament with full powers under statute to fix and control railway rates, to revise this rate structure in order to facilitate the interchange of commodities between the various portions of the Dominion, as well as the encouragement of industry and agriculture and the development of export trade."

Is this not "to make rates to develop business"?

Therefore, the Board of Railway Commissioners has the authority and duty to fix rates to develop industry, agriculture, internal and export trade. If it has that authority and that duty, it follows that it has the authority and the duty to *disallow rates which are detrimental to industry, agriculture or trade.*

These competitive rates are discriminating against inland British Columbia, detrimental in part to the lumber industry of Eastern Canada.

It would serve the country if they were applied to inland British Columbia but restricted as to Group 2, for destination to Montreal, Quebec, Sorel and Three Rivers.

I would grant the application.

Ottawa, April 16, 1935.

P.S.—These conclusions as to the rates concerning inland British Columbia are at variance with my former judgment in file No. 26901.63, application of the Arrow Lakes Lumber Company, because I was not made aware then, of the bearing of these low rates on competition with the Eastern lumber industries, but they rely on the same principles.

ORDER No. 51865

In the matter of the application of the Canadian Lumbermen's Association for an Order disallowing competitive rail rates from British Columbia coast points to stations in Eastern Canada on lumber other than construction timber 4 inches by 4 inches and larger.

File No. 26901.62

THURSDAY, the 18th day of April, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading the submissions filed in support of the application and on behalf of the British Columbia Wholesalers' Lumber and Shingle Association, the Canadian National Railways, and the Canadian Pacific Railway Companies,—

It is Ordered: That the application be, and it is hereby, refused.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51869

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for permission to issue a supplement to its Tariff C.R.C. No. E-4742 upon less than statutory notice, to correct errors therein.

File No. 27612.110

TUESDAY, the 23rd day of April, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon consideration of what is set out in the submissions of the applicant company,—

It is ordered: That the applicant company be, and it is hereby, permitted to publish and file, upon five days' notice, a supplement to its Tariff C.R.C. No. E-4742 to make the following changes therein:—

(*a*) To advance rate on bottles, jars, etc., published in Item 1085 of Canadian Pacific Railway Tariff No. E-1355-K, C.R.C. No. E-4742, from Montreal, Que., to Waterloo, Ont., from 25 cents per 100 pounds to 35 cents per 100 pounds and

(*b*) To amend Items 2720, 2725, and 2730 of Canadian Pacific Railway Tariff No. E-1355-K, C.R.C. No. E-4742, by placing circle reference mark 30 against rates from Montreal, Que., to Fort William, Port Aurthr, and West Fort William, Ont.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51870

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for permission to file on less than statutory notice a revised page No. 256 to Tariff C.R.C. No. E-2115, to correct an error.

File No. 27612.111

WEDNESDAY, the 24th day of April, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon its appearing that by mistake rates to the head of the lakes via all-rail route were published in Item 6395 of the said Tariff C.R.C. No. E-2115, and it is desirable that such error be corrected promptly,—

It is ordered: That the applicants be, and they are hereby, permitted to publish and file, upon five days' notice, a revised page No. 256 to Tariff C.R.C. No. E-2115 cancelling the application of rates on sugar, in Item 6395, from Montreal, Quebec, to Port Arthur, Fort William, and West Fort William, Ontario, via all-rail route, and substituting application via lake and rail route only.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51882

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for permission to amend Tariff C.R.C. No. E-4746, upon less than statutory notice, to correct an error.

File No. 27612.112

THURSDAY, the 2nd day of May, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon its appearing that the applicant company is unable to arrange a collection and delivery service for freight at Aylmer, Quebec,—

It is ordered: That the applicant company be, and it is hereby, permitted to file, on one day's notice, a supplement to Tariff C.R.C. No. E-4746, cancelling Aylmer, Quebec, as a collection and delivery point.

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR FEBRUARY, 1935

Railway accidents	147,	with 19	persons killed	and 137	injured
Railway accidents at highway crossings	15,	with 13	persons killed	and 20	injured
	162,	32		157	

	Killed	Injured
Passengers	1	10
Employees	6	116
Others	25	31
	32	157

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents	
	Quebec
1	Auto Truck—Driver disregarded wigwag signal; failed to stop for crossing. Que. licence F-6263.
	Ontario
3	Automobile—Ran into side of train. Ont. licences KJ-364, ED-318; N.Y. licence DLR-24790.
2	Automobile—Driver failed to heed bell and wigwag signal. Licences Ont. H-58, P-9206.
1	Automobile—Auto driver failed to see or hear train. Ont. licence FE-929.
1	Automobile—Driver failed to obey flagman's signal to stop. Licence Ont. A-7925.
2	Auto Truck—Driver ran into side of train. Licences Ont. 44773-C, Ont. 21523-C.
2	Auto Truck—Driver failed to see or hear train. Ont. licences 27839-C, 52-480-C.
1	Auto Truck—Ran through gates in lowered position. Ont. licence 32940-C.
	Alberta
1	Auto Truck—Licence Alta. D-13-350.
	British Columbia
1	Automobile—Ran into side of train. Licence B.C. 89-758.

Of the fifteen accidents at highway crossings, six occurred at protected crossings and nine at unprotected crossings. Eight of the accidents occurred during the daylight hours and seven at night.

SUMMARIES OF ORDERS ISSUED BY THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA

51846. April 6—Amending Order 51820,, Mar. 21, 1935, by striking out words "five and one-half" in operative part and substituting therefor the word "five" as rate of interest in *re* removing certain facilities in connection with subways at Carlaw avenue and Gerrard street, Toronto.

51847. April 5—Authorizing New York Central R.R. to install double bells and wigwags, in lieu of crossing gate, at crossing of Queen street, Niagara Falls, Ont.

51848. April 8—Relieving C.P.R. from maintaining cattle guards at 11 crossings on its MacTier Subdivision, Ont.

51849. April 9—Relieving Toronto, Hamilton and Buffalo Ry. from posting certain tariffs in stations where population 1,000 or less.

51850. April 9—Declaring C.N. Rys. crossing of Mill street, Saint John, N.B., protected to Board's satisfaction.

51851. April 10—Approving service station contract between Bell Telephone Co., and Edouard Villeneuve.

51852. April 11—Authorizing British Columbia Department Public Works to reconstruct overhead bridge over C.P.R. at Castlegar, B.C.

51853. April 12—Authorizing C.N. Rys. to construct extension of an industrial track across diverted highway in SW¼, Sec. 9-45-3, W2M., Sask.

51854. April 12—Authorizing New York Central R.R. to install a cut-out in connection with bell and wigwag installed at crossing of Clifton Hill street, Niagara Falls, Ont.

51855. April 13—Approving plan showing proposed lengthening of ringing circuits for highway crossing bell installed by C.P.R. at crossing at Lot 10, Con. 10, Tp. Medonte, Co. Simcoe, Ont.

51856. April 12—Declaring C.N. Rys. crossing of Main street, Welland, Ont., protected to Board's satisfaction.

51857. April 15—Declaring C.N. Rys. crossing, first south of Milton Station, Ont., protected to Board's satisfaction.

51858. April 15—Declaring Niagara, St. Catharines and Toronto Ry. crossing of Stanley street, Niagara Falls, Ont., protected to Board's satisfaction.

51859. April 17—Declaring C.P.R. crossing of Bridge street, Almonte, Ont., protected to Board's satisfaction.

51860. April 16—Extending until May 12, 1936, time within which spur to be constructed by C.N. Rys. across Wellington street, Ann street, and proposed Smith street, when opened, at Montreal, Que.

51861. April 16—Authorizing C.N. Rys. to remove station agent at Swanson, Sask. (Caretaker to be appointed.)

51862. April 17—Declaring C.P.R. crossing, third east of Lisgar Station, Ont., protected to Board's satisfaction.

51863. April 17—Declaring C.N. Rys. crossing of Kingsbury avenue, Tp. Etobicoke, Ont., protected to Board's satisfaction so long as watchman is maintained during race meets, between hours of 12 o'clock noon and 8 p.m.

51864. April 18—Authorizing Rural Municipality of Saltcoats, Sask., to construct highway crossing over C.P.R. between Secs. 3 and 10-23-1, W2M., Sask.

51865. April 18—Refusing application of Canadian Lumbermen's Association for an Order disallowing competitive rail rates from British Columbia coast points to stations in Eastern Canada on lumber other than construction timber 4 inches by 4 inches, and larger.

51866. April 18—Declaring C.N. Rys. crossing first west of Petrel Junction, Man., protected to Board's satisfaction.

51867. April 18—Directing C.N. Rys. to maintain a speed restriction of 10 miles an hour at crossing of Dorchester road, Tp. Stamford, Ont.

51868. April 20—Approving agreement between Bell Telephone Co. and Le Telephone Milot.

51869. April 23—Authorizing C.P.R. to file supplement to Tariff C.R.C. No. E-4742 to correct errors—*re* rates on bottles, jars, etc.

51870. April 24—Authorizing C.N. Rys. to publish and file a revised page No. 256 to Tariff C.R.C. No. E-2115 cancelling application of rates on sugar, in item 6395, from Montreal, Quebec, to Port Arthur, Fort William and West Fort William, via all-rail route, and substituting application via lake and rail route only.

51871. April 23—Approving Supplement 1 to agreement between Bell Telephone Co. and Joliette Telephone Corporation.

51872. April 25—Approving Supplement 1 to service station contract between Bell Telephone Co. and La Cie de Telephone de Ste Angele de Premont.

51873. April 25—Authorizing Ontario Department Highways to construct highway crossing over C.N. Rys. ballast pit spur on Lot 6, Con. 3, Tp. Horton, Co. Renfrew, Ont.

51874. April 23—Authorizing C.P.R. to remove station agent at Beachville, Ont. (Caretaker to be appointed.)

51875. April 23—Approving plan showing changes in location of signals and controller at New York Central Ry. crossing of Erie avenue, Niagara Falls, Ont.

51876. April 24—Authorizing Alberta Department Public Works to reconstruct crossing over C.N. Rys. on north and south road allowance between Secs. 22 and 23-53-17, W5M., near Edson, Alta.

51877. April 29—Authorizing C.P.R. to operate its trains over subway at St. Maurice street, Trois Rivieres, Que.

51878. April 27—Amending Order 51797, March 11, 1935, *re* bell and wigwag at C.P.R. crossing of Queen street, Tp. Etobicoke, Ont., by striking out pargraph 2 and substituting clause directing that 40 per cent of cost be paid out Railway Grade Crossing Fund, not exceeding $800, and remainder of cost as well as maintenance be paid one-half by C.P.R. and one-half Ontario Department of Highways.

51879. April 30—Approving service station contract between Bell Telephone Co. and the Donnacona Paper Co., Ltd.

51880. April 30—Approving location of C.N. Rys. portable station to be moved from Jessop to Kasil, Que.

51881. April 30—Approving Supplement 1 to agreement between Bell Telephone Co. and Parkhill-Arkona Telephones, Limited.

51882. May 2—Authorizing C.P.R. to file on one day's notice a supplement to Tariff C.R.C. No. E-4746, cancelling Aylmer, Que., as a collection and delivery point.

51883. May 1—Authorizing C.N. Rys. to use and operate bridge over Knee Hills Creek, mileage 78.8 Three Hills Subdivision, Alta.

51884. May 1—Authorizing Ontario Department Northern Development to construct highway crossing over C.P.R. at Byng Inlet, Ont.

51885. May 2—Declaring C.P.R. crossing, third east of Arkwood, Ont., protected to Board's satisfaction.

51886. May 1—Extending until May 12, 1936, time within which C.N. Rys. spur may be constructed across Wellington, Ann, and Smith streets, Montreal, Que., and tracks of Montreal Tramways Co., to be constructed on Smith street; and rescinding Order 51860, April 16, 1935.

51887. May 3—Authorizing Ontario Hydro-Electric Power Commission to erect power wires across C.N. Rys. on road in Lot 10, between Cons. 9 and 10, Tp. Bertie, Co. Welland, Ont.

51888. May 3—Authorizing Ontario Hydro-Electric Power Commission to erect power wires across C.N. Rys. on road between Lots 14 and 15, Con. 9, Tp. of Yarmouth, Co. Elgin, Ont.

51889. May 3—Authorizing Ontario Hydro-Electric Power Commission to erect wires across C.N. Rys. on road between Lots 9 and 10, Con. 1, Tp. Camden East, Co. Lennox and Addington, Ont.

51890. May 3—Authorizing Ontario Hydro-Electric Power Commission to erect wires across C.N. Rys. at Lots 29 and 30, between Cons. 8 and 9, Tp. Markham, Co. York, Ont.

51891. May 3—Authorizing Ontario Hydro-Electric Power Commission to erect wires across C.N. Rys. between Lots 6 and 7, Con. 5, Tp. Brantford, Co. Brant, Ont.

51892. May 3—Authorizing Ontario Hydro-Electric Power Commission to erect wires across C.N. Rys. between Lots 6 and 7, Con. 5, Tp. Brantford, Co. Brant, Ont.

51892. May 3—Authorizing Ontario Hydro-Electric Power Commission to erect wires across C.N. Rys. on road between Lots 71 and 72, Con. 1, and Lots 11 and 12, Con. 2, Tp. King, Co. York, Ont.

51893. May 3—Authorizing Ontario Hydro-Electric Power Commission to erect wires across C.N. Rys. on road in Lot 9, between Cons. 6 and 7, Tp. Lochiel, Co. Glengarry, Ont.

51894. May 3—Authorizing Ontario Hydro-Electric Power Commission to erect wires across C.N. Rys. between Lots 110 and 111, Con. 1, West, Tp. Gwillimbury East, Co. York, Ont.

51895. May 3—Approving plans showing railing and lights to be provided on the Interprovincial Bridge between Ottawa and Hull-C.P.R.

51896. May 2—Authorizing Ontario Hydro-Electric Power Commission to erect wires across C.N. Rys. on road in Lot 3, Con. 14, Tp. Windham, Ont.

51897. May 2—Authorizing Ontario Hydro-Electric Power Commission to erect wires across C.N. Rys. on road in Lot 3, Con. 14, Tp. Windham, Co. Norfolk, Ont., approximately one mile northwest of Simcoe Station, Ont

DEC 4 1935

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Dangerous Practices of Motorists, Drivers of Other Vehicles, and Pedestrians at Protected Crossings

In many cases accidents at highway crossings are due to the negligence of those driving automobiles and other vehicles and of pedestrians. This negligence is found both at unprotected and protected crossings.

The Canadian National Railway lines from September 1, 1934, to February 28, 1935, show forty-nine cases where there was danger at protected crossings due to the negligence of those using the crossings.

The Canadian Pacific Railway (Eastern Lines) from August 1, 1934, to January 31, 1935, and (Western Lines) from July 1, 1934, to December 31, 1934, show a total of one hundred and fifty-five cases.

Notwithstanding safety devices and cautionary signals, people take chances and disregard safety. Motor accidents are becoming more frequent. Every sane motorist deplores this.

The Board hopes that the press will give as much publicity as possible to what is covered in the statement, with the hope that it may educate motor drivers and others to be more careful at crossings.

If accidents are to be lessened, the sane motorist must educate the culpably negligent motorists, some of whose actions are recorded in the following lists:—

CANADIAN NATIONAL RAILWAY LINES

Date	Time	Crossing	License No. of Auto	Dangerous Practices
1934				
Sept. 4.....	10.50 a.m...	Pinnacle St., Belleville, Ont.	MJ-602.....	Driving into crossing gate when lowered.
" 4.....	11.45 a.m...	No. 2 Highway Crossing, 3 miles west of Chatham, Ont.	Ont. F-6525.....	Auto approached crossing at too high rate of speed. Went into a skid breaking wig-wag standard.
" 4.....	6.03 p.m....	St. Andrews Road, Cornwall, Ont.	Ont. W-5115.....	Driver apparently did not notice lowered gates; crashed into gates breaking same.
" 5.....	12.15 p.m....	Highway No. 7, Marmora, Ont.	.....	Passed over crossing ahead of engine. View was good, and driver of auto must have observed train.

CANADIAN NATIONAL RAILWAY LINES—*Continued*

Date	Time	Crossing	License No. of Auto	Dangerous Practices
1934				
Sept. 8.....	.....	Ontario St., west of Main St., Port Hope, Ont.	C-20994.....	Truck left foul of track necessitating stopping of train in order to avoid accident. Train delayed four minutes.
" 10.....	7.00 p.m....	Main St., Ottawa East, Ont.	Ont. S-3891.....	Coming from behind traffic already stopped at gate, crashing into gate and breaking same.
" 10.....	7.25 p.m....	Bridge St., Montreal, Que.	Que. 23848.....	Failed to stop on flagman's signal. Passed in front of approaching train and almost struck flagman.
" 12.....	7.20 p.m....	Bridge St., Montreal, Que.	Que. 49164.....	Failed to stop on flag signal from watchman and passed in front of approaching train.
" 13.....	3.00 p.m....	Booth St., Ottawa, Ont..	MR-473.....	Auto failed to stop when signalled to do so and passed flagman. Train approaching at the time.
" 14.....	2.55 p.m....	Front St., Toronto, Ont..	AD-896.....	Did not stop when gate down.
" 14.....	18.55.....	Water St., Winnipeg, Man.	Man. 25-857.....	Ran past red light.
" 27.....	12.48 a.m....	Main St. Crossing, Glencoe, Ont.	P-7005.....	Approached crossing at too high rate of speed without clear vision. Broke 16 ft. off crossing gate.
" 29.....	4.55 p.m....	Gravel Road, Morrisburg, Ont.	ZA-934.....	Crashed into gates when they were down.
Oct. 6.....	9.50 a.m....	E. Main St., Welland, Ont.	AL-145.....	Ran through crossing gate when down, damaging same.
" 17.....	3.15 a.m....	Perth St., Brockville, Ont.	Ont. W-1630.....	Crossing gates down when driver cranked his car in gear with the result that it sprang forward and ran through crossing gates.
" 18.....	10.55 p.m....	Front St., Orillia, Ont....	Ont. ET-878.....	Gates lowered; auto approached crossing at too high rate of speed. Crashed into gates, breaking same.
" 19.....	10.00 a.m....	Front St., Toronto, Ont...	C-2948.....	Going through gates before they were raised clear.
" 27.....	2.50 p.m....	Booth St., Ottawa, Ont...	Ont. JK-65.....	Driver of auto stopped for signal, but before engine reached crossing it started up and crossed over tracks in front of approaching engine, causing engineer to apply emergency brakes.
" 30.....	4.15 p.m....	Front St., Orillia, Ont....	Ont. ES-558....	Gates lowered; one auto stopped and second auto turned out past it and ran into north gate, breaking same.
Nov. 9.....	6.00 K.....	Main St., Dauphin, Man..	T-9-462.....	Engine backing over crossing, truck with about 15 men riding in it going north and travelling about 30 miles per hour.
" 6.....	12.25 p.m....	Ontario St., Collingwood, Ont.	Ont. FV-84.....	Failed to see or hear train and ran into side of engine. Driver quite deaf. Proper crossing signals sounded.
" 13.....	11.45.....	Perth St.,Brockville,Ont.	.....	Driver came around end of gate and was struck by yard engine Did not wait for gates to be raised.
" 21.....	10.46 a.m...	Laurier Ave. Crossing, Levis, Que.	Que. L-3355.....	Auto did not stop in time to avoid striking the south end of gate.
" 27.....	3.15 p.m....	Brock St., Drummondville, Que.	Que. 12541.....	Gates were lowered on both sides of Brock St. Driver of truck ran into south gate.
Dec. 1.....	9.27 p.m....	Keele St., Toronto, Ont..	K-9452.....	Driver of auto stopped and then started again, almost knocking flagman down. Engine approaching crossing.

CANADIAN NATIONAL RAILWAY LINES—*Concluded*

Date	Time	Crossing	License No. of Auto	Dangerous Practices
1934 Dec. 12	8.30 a.m.	King St., Peterboro, Ont.	KK-533	Was stopped at crossing by lowered gates, and just as train cleared crossing proceeded across, colliding with gates, damaging them.
" 13	4.00 p.m.	Mill St., Saint John, N.B.	J-6555	Gates down, red light on, gongs sounding. Auto ran into north side of gate. Driver claimed he did not see gate until he hit it.
" 13	7.15 a.m.	Wallace Ave., Toronto, Ont.	B-7856	Auto ran into lowered gates, breaking same.
" 15	9.25 p.m.	Front St., Orillia, Ont.	EM-418	Auto approached crossing at about 40 m.p.h. and failed to stop before striking lowered gate, breaking same.
" 12	11.10	Weston Road, Toronto, Ont.	B-3471	Auto skidded approaching crossing and crashed into gate, breaking same.
" 18	8.50 p.m.	Keele St., Toronto, Ont.	H-3234	Driver of auto drove past watchman, stopped, and then proceeded over crossing ahead of train.
" 19	5.00 p.m.	Kings St., Sherbrooke, Que.	F-9174	Ran through crossing gates when they were down.
" 22	2.53 a.m.	Main St., Glencoe, Ont.	FE-569	Auto approached crossing too fast and collided with gates, breaking same.
" 22	4.15 p.m.	Wallace Ave., Toronto, Ont.	L-715	Auto struck lowered gates, breaking same.
" 22	5.15 p.m.	Front St., Toronto, Ont.	LS-379	Auto struck gate, breaking same. Roadway slippery and visibility poor account smoke from engine hanging low.
" 31	8.10 p.m.	Lindsay St., Drummondville, Que.	T-2068	Auto ran into gate.
1935 Jan. 1	3.25 p.m.	Hurontario St., Port Credit, Ont.	E.B. 905	Ignored signals and crossed in front of engine.
" 3	1.15 p.m.	Charlotte St., Peterboro, Ont.	HO-118	Auto driving too fast to stop and skidded into gate, breaking it off. Roads slippery.
" 5	6.25 p.m.	Main St., Ottawa West, Ont.	JK-362	After south gate was lifted, driver drove over crossing and struck north gate before it was lifted.
" 11	7.35 p.m.	Main St., Ottawa East, Ont.	L-920	Driver did not use good judgment and skidded into gates. Roadway icy.
" 21	3.25 p.m.	Mill St., Saint John, N.B.	J-2018	Auto ran into gate, damaging same.
" 29	9.33 a.m.	St. Dominique, St. Jonquiere, Que.	T. 2820	Did not have car under control before attempting to cross and could not stop in time to avoid striking engine.
" 30	12.40 p.m.	Lindsay St., Drummondville, Que.	H-23775	Ran into lowered south gate, damaging same.
" 30	8.10 p.m.	Mill St., Saint John, N.B.	J-2735	Ran into lowered gate, breaking same.
Feb. 11	5.00 p.m.	Queen St., Ottawa, Ont.	J. D. 469	Did not exercise sufficient care approaching gates. Claimed sun was in his eyes and he did not notice lowered gate.
" 14	2.15 p.m.	Front St., Orillia, Ont.	43650 C	Auto failed to stop before reaching gates and broke same.
" 17	5.50 p.m.	Strachan Ave., Toronto, Ont.	B-7272	Ignored lowered gates and damaged same.
" 18	10.58 p.m.	John St., Aylmer, Ont.	BC-828	Crashed through crossing gates which had been down for some time.
" 26	7.30 a.m.	King St., Sherbrooke, Que.	9217	Not paying any attention to gate being down, ran straight through.

Date and District	Time	Crossing	Licence No. of Auto	Dangerous Practices
New Brunswick District 1934				
Aug. 2	3.05 p.m.	Douglas ave., Saint John	J-5889	Dashed under gates while being lowered for No. 15.
Aug. 3	3.20 p.m.	" "	J-1704	Dashed under gates while being lowered for No. 127.
Aug. 11	4.20 p.m.	" "	J-4083	Dashed under gates while being lowered for No. 105.
Aug. 17	3.20 p.m.	" "	J-4951	Dashed under gates while being lowered for No. 127.
Aug. 22	3.05 p.m.	" "		Dashed under gates while being lowered for No. 15.
Aug. 23	8.15 p.m.	" "		Dashed under gates while being lowered for No. 102.
Aug. 24	5.30 p.m.	" "	J-3912	Stopped on crossing to pick up passengers.
Aug. 25	3.40 p.m.	" "	J-1585	Dashed under gates while being lowered for engine.
Aug. 11		Fairville crossing, Saint John	J-1025	Dashed under gates while being lowered, not stopping until watchman shouted. Bell ringing.
Aug. 16		" "	J-4447	Dashed under gates while being lowered, not stopping until watchman shouted. Bell ringing.
Aug. 25		" "	J-3539	Dashed under gates while being lowered, not stopping until watchman shouted. Bell ringing.
Sept. 3	11.30 a.m.	Douglas ave., Saint John	JL-521	Drove under gates as they were coming down. Bell ringing.
Sept. 18	3.20 p.m.	" "	J-1234	Dashed under gates while being lowered for No. 127.
Sept. 22	11.00 a.m.	" "	W-4597	Drove under west gates when almost down, just clearing top of car.
Sept. 22	3.05 p.m.	" "	CJ-170	Turned on crossing.
Sept. 22	2.40 p.m.	" "	J-2497	Dashed under gates while being lowered for hand car.
Sept. 26	11.25 a.m.	" "	CJ-676	Drove under east gates as they were almost down. Bell ringing.
Sept. 28	3.50 p.m.	" "	J-1934	Turned on crossing.
Sept. 1	11.40 a.m.	Fairville crossing, Saint John	J-6505	Auto struck and broke off tip of northeast gate, travelling at speed of 20 m.p.h. passed 35 to 40 feet beyond crossing before stopping.
Sept. 7		" "	J-2955	Dashed under gates while being lowered, not stopping until watchman shouted. Bell ringing.
Sept. 13		" "	J-2319	Dashed under gates while being lowered, not stopping until watchman shouted. Bell ringing.
Sept. 25		" "	J-6070	Dashed under gates while being lowered, not stopping until watchman shouted. Bell ringing.
Oct. 3	3.25 p.m.	Douglas ave., Saint John	J-2593	Stopped on crossing to pick up passengers.
Oct. 9	3.10 p.m.	" "		Small boy pushed up gates while No. 41 was passing.
Oct. 9	3.15 p.m.	" "	J-6411	Stopped on crossing to pick up passengers.
Oct. 19	2.00 p.m.	" "	J-2318	Drove under gates as they were coming down. Bell ringing.
Oct. 23	7.15 p.m.	Douglas ave., Saint John	J-7198	Turned on crossing.
Oct. 30	4.35 p.m.	" "		Truck dashed under gates while being lowered for transfer 3423

CANADIAN PACIFIC RAILWAY (EASTERN LINES)—*Continued*

Date and District	Time	Crossing	Licence No. of Auto	Dangerous Practices
NEW BRUNSWICK DISTRICT—*Con*				
1934				
Oct. 11	.....	Fairville crossing, Saint John	J-5629	Dashed under gates being lowered not stopping until watchman shouted. Bell ringing.
Oct. 24	.....	" "	J-7682	Dashed under gates being lowered not stopping until watchman shouted. Bell ringing.
Oct. 25	.....	" "	.....	Young boy raised gates and went under same.
Oct. 27	5..00 p.m.	" "	.....	Smashed through both gates. Raining very heavily.
Oct. 28	.....	" "	.....	While flagging crossing account broken gates, narrowly escaped being run down by auto.
Nov. 10	7.55 a.m.	Douglas ave., Saint John	CJ-120	Passed under gates as they were being lowered. Bell ringing.
Nov. 10	.....	Fairville crossing, Saint John	J-2903	Passed under gates as they were being lowered.
Nov. 11	3.10 p.m.	Douglas ave., Saint John	J-7832	Dashed over crossing past a stop sign.
Nov. 26	7.10 p.m.	" "	.....	Some boys held down gates so that they could not be lifted after a train had passed.
Nov. 30	8.00 a.m.	" "	CF-612	Truck drove into gates on west side of crossing. Street was slippery and driver could not get truck stopped in time. Bell was ringing.
Dec. 8	2.55 p.m.	" "	.....	Truck dashed under gates while they were being lowered for a passing light engine.
Dec. 10	.....	Fairville crossing, Saint John	J-4162	Passed under gates while they were being lowered.
Dec. 12	10.30 a.m.	Douglas ave., Saint John	J-7155	Passed under gates while they were being lowered.
Dec. 21	.....	Fairville crossing, Saint John	.....	Two young ladies raised gates and passed under them.
Dec. 31	4.20 p.m.	Douglas ave., Saint John	J-4178	Auto ran into gates while they were down for Train No. 105. Bell ringing.
Jan. 2	1.45 p.m.	" "	CJ-287	Truck passed flagman, while on crossing with stop sign.
Jan. 4	8.45 p.m.	" "	.....	Truck dashed under gates while they were being lowered for a freight train.
Dec. 17	4.20 p.m.	" "	.....	A Hydro Commission truck dashed under gates while they were being lowered for Train No. 105.
Jan. 19	4.45 p.m.	" "	J-1868	Auto ran past a stop sign.
Jan. 22	10.15 p.m.	" "	J-3547	Auto ran over crossing at a very high rate of speed while the gates were being lowered.
1935				
Jan. 26	5.30 p.m.	" "	.....	An auto turned on the crossing.
Jan. 28	.....	Fairville crossing, Saint John	J-2432	Passed under gates, just ahead of an engine passing at the time.
Jan. 28	.....	" "	CJ-1376	Auto came up along the track between Fairville Station and the highway crossing.
QUEBEC DISTRICT				
1934				
Sept. 17	.....	Portland st., St. Johnsbury	VT. 64333	Auto ran into gates, breaking wood on gate arm.
Oct. 23	.....	Cowansville automatic gate.	.....	Auto ran into gates, putting gates out of service.
Oct. 27	.....	" "	Que. 71642	Auto ran into gates stand on station side when gates were down
Sept. 10	.....	St. Valier st., Quebec	Que. 12088	Auto ran into gate No. 5—light on gate burning brightly.
Sept. 21	.....	Crown street, Quebec	.....	Passed under gates, breaking gate arm on opposite side of crossing.

CANADIAN PACIFIC RAILWAY (EASTERN LINES)—*Continued*

Date and District	Time	Crossing	Licence No. of Auto	Dangerous Practices
QUEBEC DISTRICT—*Con.* 1934				
Oct. 21	.....	Chelsea rd., Hull West	Ont. 477	Auto ran through both west gates, breaking them.
Nov. 13	.....	Lake shore rd., Vaudreuil	Que. 99606	Auto skidded into north gate breaking gate arm.
Nov. 29	.....	Dorchester st., Quebec	Que. 4562	Auto ran into south side of Dorchester street crossing gate when it was down, damaging it.
Dec. 1	.....	Bridge st., Quebec	Que. H-1937	Crossing gates were being lowered as auto approached and gateman on duty stopped lowering gates, but chauffeur passed over crossing before gates were raised, and the iron support on gate arm caused slight damage to roof of car.
Dec. 8	.....	Crown st., Quebec	Que. T-908	Auto approached crossing after gate on south side had been lowered and ran into it, breaking the arm.
Dec. 20	.....	Crown st., Quebec	.....	Auto travelling at very high rate of speed failed to stop, although crossing gates were down, and broke north side arm of Crown Street crossing gate. Gateman on duty was unable to record licence number.
Dec. 22	.....	Montcalm st., Hull West	Que. K-1187	Auto ran into north and south gates, which were down, damaging both arms.
Dec. 24	.....	Elmhurst ave., Montreal	Que. L-477	Truck approached crossing after gates had been lowered and failed to stop, breaking end of south east gate.
Dec. 27	.....	Bonaventure st., Trois Rivieres.	Que. T-4632	Auto travelling from north to south failed to stop although gates were down on both sides of crossing, and ran into same, breaking both gate arms.
Dec. 31	.....	Crown st., Quebec	Que. 11903	Auto running at high rate of speed ran into north east gate, which had been lowered, breaking gate arm.
1935				
Jan. 14	.....	Portland st., St. Johnsbury.	Vt. 12379	Plymouth sedan, ran into gate at this crossing when it was down breaking woodwork of gate arm.
Jan. 25	.....	Rockland ave., Outremont	Que. 4692	Truck, travelling from south to north, approached crossing at speed of about 30 miles per hour, after gates had been lowered, and failed to stop, breaking south gate arm. Chauffeur stated frost on windshield prevented him from seeing gates were down.
ONTARIO DISTRICT 1934				
Aug. 25	11.50 a.m.	Adelaide st., London	.....	Disregarded watchman's stop sign and stalled on crossing.
Aug. 17	5.07 p.m.	M. 7·5, St. Marys S.D.	O-2475	Auto ran into side of engine tender 682. Signals were given.
Sept. 4	3.45 p.m.	Willialm st., Chatham	2430	Ran under gate arm while being lowered and breaking same.
Sept. 12	12.00 a.m.	Waterloo st., London	O-4853	Ran past one gate and getting between the two gates.
Sept. 13	10.12 p.m.	Waterloo st., London	P-3345	Ran into gate breaking same.
Sept. 20	8.20 a.m.	Dundas st., Cooksville	C-7615	Disregarded signals and crossed in front of freight train.

CANADIAN PACIFIC RAILWAY (Eastern Lines)—*Continued*

Date and District	Time	Crossing	Licence No. of Auto	Dangerous Practices
Ontario District—*Con.* 1934				
Sept. 27	10.25 p.m.	Tecumseh rd., M. 110·7	T-620	Ran into side of engine. Signals were given.
Oct. 1	3.30 p.m.	Adelaide st., London	N-5233	Disregarded stop sign and crossed in front of train.
Sept. 6		Front st. & Spadina ave., Toronto.	E-3404	Ran into gate after it had been lowered.
Aug. 11		McLennan ave., Toronto	F-8540	Ran into and damaged north half of crossing gate.
Nov. 1		Osler ave., Toronto	Z-1395	While all gates lowered for train movement, automobile, travelling south, ran into and damaged north-west half of crossing gates.
Nov. 2	12.06 p.m.	Richmond st., London	O-5653	Auto failed to hear warning bell ringing and drove over tracks and struck south gate arms, being lowered, breaking same off.
Nov. 6	6.10 p.m.	Waterloo st., London	18051-C	Truck driver failed to notice crossing gates down, in time to stop, and had to turn up over sidewalk onto lawn.
Nov. 11		Front st. & Spadina ave., Toronto.	K-1809	With gates lowered for movement of yard engine, automobile drove out of Direct Service Station, breaking gate.
Nov. 11	3.20 a.m.	Talbot st., St. Thomas	AJ 535	Plymouth coach ran into side of caboose on freight train, injuring driver. Crossing bell ringing, headlight burning and bell ringing on engine.
Nov. 11	12.20 a.m.	Richmond st., London	ME 698	Auto going north unable to stop, crashed through and broke south and north gate arms at crossing. Auto had defective brakes and driver was apprehended by City Police.
Nov. 15	2.25 a.m.	No. 2 Highway (M. 62·2)	R-2195	Auto failed to notice train No. 76 crossing highway and had to turn into fence to avoid hitting same. None injured.
Nov. 17	12.10 p.m.	Anne st., London	BA-57	While crossing gates down for approach of passenger train, auto drove up on sidewalk and went around end of gate arm and on to crossing between the Richmond St. gate arms in front of train and narrowly averted being struck.
Nov. 18		Front st. & Spadina ave., Toronto.	J-140	While all gates were up, automobile, travelling west on Front Street on wrong side of road, broke weights and axle of No. 5 gate.
Nov. 23	11.12 p.m.	Dundas st., Galt	A-7204	Auto disregarded crossing watchman's stop signals and crossed tracks in front of express train, and narrowly missed being struck by train.
Dec. 1		Front st. & Spadina ave., Toronto.		While all gates were up, wagon No. 14 of City Dairy Company, when travelling south across tracks, struck southwest gate on Spadina Avenue, knocking it over and breaking stand.
Dec. 3	7.00 p.m.	Dundas st., Galt	JT-483	Auto failed to observe crossing watchman's stop signals or hear engine whistle and bell signals, and was struck by passenger train No. 37, injuring two occupants of auto.

CANADIAN PACIFIC RAILWAY (EASTERN LINES)—*Concluded*

Date and District	Time	Crossing	Licence No. of Auto	Dangerous Practices
ONTARIO DISTRICT—*Con.*				
1934				
Dec. 7.....	7.30 p.m...	Anne st., London.....	P-4575.....	Auto, unable to stop on slippery roadway, slid into crossing gate arm and broke same. Crossing bell was ringing, gate lanterns burning, and gate arms were down for approach of passenger train.
Dec. 7.....	9.10 p.m...	Pall Mall st., London.....	P-5728.....	Auto skidded on slippery pavement and broke gate arm.
Dec. 7.....	11.30 p.m...	Richmond st., London....	C-46217-C.....	Truck going north at rapid rate of speed ran through centre of gate arms, breaking off portion of gate arms, Crossing bell ringing and gate lanterns burning. Gates down for approach of light engine.
Dec. 9.....	1.15 a.m...	Ann st., London.....	P-5249.....	Taxi slid on roadway into gate arm, breaking it. Bell ringing and gate lantern burning.
Dec. 15.....	10.00 p.m...	Richmond st., London....	P-5672.....	Auto passed standing autos at lowered gate arms and skidded on slippery pavement, and slid into gate arms, breaking north west arm off.
Dec. 17.....	10.40 p.m...	Dundas st., Galt.....	B.Y. 134.....	As freight train approaching, auto ignored stop signals from crossing watchman and crossed tracks in front of train.
Dec. 19.....	1.30 a.m...	William st., Chatham.....	.....	As crossing gate arms were down for approaching passenger train, auto, going north, ran into southeast gate arm, breaking same. Auto backed up and drove away before could secure licence number.
Dec. 19.....	4.55 p.m...	Waterloo st., London.....	P. 7483.....	Auto, going south, failed to notice gate arms down or hear bell ringing until too late to stop, breaking gate arm.
Dec. 25.....	5.45 a.m...	Queen st., Chatham.....	.....	Auto ran through both gate arms, breaking same.
1935				
Jan. 2.....	4.50 p.m...	" "	R. 2731.....	Auto, going north, failed to hear crossing bell ringing, and ran into gate arm, breaking same.
Jan. 18.....	2.55 p.m...	" "	B. 1303.....	Train struck auto at this crossing. Engine whistle had been sounded, engine bell was ringing, wig-wag signal and bell ringing.
Jan. 23.....	6.05 p.m...	Richmond st., London....	R. 843.....	As gates were down, bell ringing and gate lamps lighted, an auto going north turned out and passed standing autos, crashing through both south and north gate arms.
ALGOMA DISTRICT—				
1934				
Nov. 1.....	5.30 a.m...	Elm st., Sudbury.....	.....	Southwest gate broken. Bell ringing and gates down.
Nov. 12.....	12.40 p.m...	" "	40298-C.....	Southwest gate broken. Bell ringing and gates down.
Dec. 19.....	12.40 a.m...	" "	KR-272.....	Both gates west side of crossing damaged. Bell ringing and gates down.
Dec. 24.....	4.30 a.m...	" "	LA-152.....	Gate on southeast side broken. Bell ringing and gates down.
1935				
Jan. 21.....	7.15 p.m...	" "	MN-184.....	Southwest gate broken. Bell ringing and gates down.
Jan. 27.....	7.10 p.m...	" "	MZ-945.....	Southeast corner gate broken. Bell ringing and gates down.

Date and District	Time	Crossing	Licence No. of Auto	Dangerous Practices
SASKATCHEWAN DISTRICT 1934				
July 20	16.40 K	Broadway, Yorkton	37-264	Regardless of stop signal crossed in front of engine.
July 29	16.45 K	" "	22-896	" "
July 31	16.45 K	" "	22-999	" "
Aug. 13	16.00 K	" "	23-073	Disregarded stop signal and drove in front of engine nearly running down city employee.
Aug. 31	17.15 K	" "	22-280	Regardless of stop signal crossed in front of engine.
Sept. 1	18.10 K	" "	23-332	" "
Sept. 8	19.30 K	" "	33-592	" "
Sept. 11	17.10 K	" "	41-501	" "
Sept. 11	17.10 K	" "	22-471	" "
Sept. 11	17.30 K	" "	51-729	" "
Sept. 11	20.05 K	" "	8153	Ignored stop signal, crossed in front of engine, barely escaping mishap.
Sept. 14	17.25 K	" "	D-32	Regardless of stop signal crossed in front of engine.
Sept. 16	19.15 K	" "	33-401	" "
Sept. 20	16.20 K	" "	23-320	" "
Sept. 21	15.30 K	" "	57-628	" "
Sept. 29	18.24 K	" "	22-345	" "
July 21		Winnipeg st., Regina		Imperial Oil truck ran over crossing in front of train.
ALBERTA DISTRICT 1934				
Aug. 8	12.15 K	4th st. West, Calgary		Auto ran into gates which were down for engine to pass.
Sept. 29	13.40 K	Allowance ave. Medicine Hat.	18-645	" "
Sept. 30	14.30 K	2nd st., Medicine Hat	27-817	" "
Dec. 1	22.20 K	2nd st., Medicine Hat	18-399	Car ran into gates, breaking them.
BRITISH COLUMBIA DISTRICT 1934				
Aug. 10		Mile 0.95, Esquimalt rd., Victoria Subdivision.	B.C. 20-576	Auto driven by Fred Thorne (Indian), gates down and semaphores set "go ahead," crashed east gate, but pulled up before crashing west gate.
Oct. 20		North Vancouver Ferry		Auto truck B.C. 87-518 passed under gates on which warning bells were ringing and crossed the tracks when crossing gates were already down on far side.
Oct. 1 to Dec. 31		North Vancouver Ferry		Pedestrians duck under gates as they are coming down, even when gates on opposite side of tracks are down.

MISHAPS AT PUBLIC HIGHWAY CROSSINGS WHERE NO PERSONAL INJURY INVOLVED, DURING THE PERIOD JULY 1 TO DECEMBER 31, 1934

Division	Date	Location	Particulars
		MANITOBA DISTRICT	
FORT WILLIAM TERMINALS	Nov. 24	Heath st., West Fort William, Mileage 2.31, Kam Subdivision.	Light engine 832, proceeding over crossing, struck auto truck licence number 38431, owned and driven by E. Hendrickson, Cloud Bay, as same was going over crossing. Slight damage to truck. No damage to engine.
	Dec. 24	McDougall st., Port Arthur, Mileage 127.6, Nipigon Subdivision.	Yard engine 6232 switching cars, cut cars at crossing to allow car through. Was about to couple up cars again when truck approached from opposite direction. Yardman at crossing gave engineer signal to stop with lantern and then signalled truck to pass over crossing. Signal mistaken by engineer for back up signal and truck licence number 51062-6, owned and operated by E. W. St. Amand was struck by cars. Slight damage to truck. No damage to Company's equipment.
PORTAGE DIVISION	Oct. 24	Mileage 67, Carberry Subdivision, first crossing east of Dickens Siding.	Chevrolet truck, no licence number, owned by J. Hill and driven by his son Morely Hill, stalled on crossing and was struck by train No. 4, engine 2815. Auto totally demolished. Slight damage to cattle guard on south side. Air and signal hose at front of engine torn off.
		SASKATCHEWAN DISTRICT	
REGINA DIVISION	Aug. 13	Town Crossing east of Depot, Viceroy, Assiniboia Sub.	At 12.10 K., when Train 309, Engine 2078, was slowing down for station stop, struck Star Coach, Licence No. 69-442 driven by Miss Evelyn Bakke, of Viceroy, accompanied by Miss Pauline Winnisky, badly damaging automobile. Driver failed to see train approaching.
MOOSE JAW DIVISION	Dec. 15	Crossing immediately west of Morse Station, Swift Current Sub.	As Train No. 1, Engine 2809, was coming to a stop at station, Chevrolet Car, Licence No. 609, occupied by Provincial Commissioner of Welfare, T. M. Molloy, and Deputy Minister of Municipal Affairs, J. N. Parker, of Regina, ran into side of engine. Damage to automobile—$100; to Engine 2809—$2. Occupants of car apparently failed to notice train.
SASKATOON DIVISION	Oct. 10	Myrtle Avenue, Yorkton, Wynyard Sub.	While Extra West, Engine 677 was switching, an International Truck, Licence U.T. 279, struck the slowly moving cars, Driver, E. Ball, Yorkton, had stopped for the crossing and unintentionally moved the truck ahead when changing gears.
	Oct. 18	Broadway Crossing, Yorkton, Wynyard Sub.	While Train 2/76, Engine 677, was switching at 18.00 K., struck rear fender of auto, Man. Licence 28-207. This crossing is protected, and driver of car disregarded watchman's signal. Name unknown as driver drove off.
	Nov. 7	12 poles north of Mileage 29, Prince Albert Sub.	At 15.30 Extra South, Engine 923, struck by Essex car, Licence L. 53-282, driven by Mrs. B. Love, of Humboldt. Auto damaged. Driver admitted she intended to stop but brakes failed to hold.

MISHAPS AT PUBLIC HIGHWAY CROSSINGS WHERE NO PERSONAL INJURY INVOLVED, DURING THE PERIOD JULY 1 TO DECEMBER 31, 1934—*Concluded*

Division	Date	Location	Particulars
		SASKATCHEWAN DISTRICT—*Concluded*	
SASKATOON DIVISION —*Concluded*	Nov. 27...	Saltcoats, Wynyard Sub....	While Extra No. 76, Engine 677, was standing at station, Ford car, Licence 22-243 driven by Mr. A. G. Cripps, Yorkton, struck eighth car from engine. Driver failed to stop at stop sign and was unable to stop car when he saw train on crossing. Auto damaged.
	Nov. 28...	Mileage 70, Sutherland Sub.	Track motor was struck by Chevrolet coach, Sask. Licence 6-368, driven by Mr. M. B. Scott, Saskatoon. Driver did not see track motor in time to avoid mishap.
		ALBERTA DISTRICT	
MEDICINE HAT DIVISION.	Dec. 29...	M. 78·2, Langdon Sub-division.	Hudson car, driven by a Mr. Nichol, ran into side of train at crossing at above location. Members of train crew have no knowledge of this mishap.
LETHBRIDGE DIVISION	Oct. 10...	M. 32·03 Macleod Sub-division.	Chevrolet truck, Alta. licence D-11-129, driven by D. S. Weddenburg, ran into side of train No. 652.
CALGARY DIVISION...	Nov. 14...	Crossing south of station at Didsbury, Alta.	Automobile, licence number 35086 or 35886, driver unknown, attempted to go over crossing ahead of No. 84 (freight) which was switching, but corner of car struck auto slightly.
	Dec. 22...	Red Deer, Victoria Ave....	Chrysler sedan, Alta. licence 12-164, driven by J. F. Anderson of Calgary, drove into side of car in train No. 84. Driver did not see train until too late to stop.
EDMONTON DIVISION.	Dec. 8...	Pearce st., Wetaskiwin.....	Chevrolet sedan, Alta. licence 26-377, driven by E. Davidson, was struck by light engine 5151. Driver failed to stop while engine passing over crossing.
	Dec. 28...	M. 35 Leduc Sub-division—crossing north Ponoka station.	Ford coupe, driven by L. Tosh, Alta. licence 62-171, struck by train No. 87, engine 978, while latter backing over crossing. Driver mistook signals of trainman and attempted to get across ahead of cars.
	Dec. 29...	Whyte ave., south Edmonton.	White truck, Alta. licence B-3277, owned by Penn Coal Co., driven by N. Gubois, ran into side of tender engine 2638 while latter pulling away from station with train 521. Driver apparently approached crossing not under control.
		BRITISH COLUMBIA DISTRICT	
VANCOUVER DIVISION	Sept. 12...	Mission—Horne ave.....	Extra 3663 West struck by auto BC 44-526, driven by H. Frederickson. Headlights on auto damaged.
REVELSTOKE DIVISION	Nov. 27...	Vernon—Barnard ave.....	Yard engine 572 when pushing car and caboose north over crossing, struck Nash auto BC 35-849, owner and driver, Mr. E. J. Sutherland. Auto considerably damaged.
KETTLE VALLEY DIVISION	Sept. 27...	South Penticton—Mile 134·1 Carmi Subdn. Hastings ave. crossing.	While switching in South Penticton yard, string of five empty cars which were dropped from main track down track leading to Penticton, struck Ford auto truck, BC 93-781; damage to truck and equipment $100.

MISHAPS AT PRIVATE CROSSINGS WHERE NO PERSONAL INJURY INVOLVED DURING PERIOD JULY 1 TO DECEMBER 31, 1934

Division	Date	Location	Particulars
		MANITOBA DISTRICT	
KENORA DIVISION....	July 13...	2 poles west Mileage 101, Keewatin Sub-division.	Wagon with load of hay, owned and driven by S. Wasik, Cloverleaf, stalled on farm crossing due to broken reach, and was struck by Train No. 4, engine 2347, and pushed about 25 feet before train cam to stop. Horses had been unhitched from wagon before wagon struck. Damage to wagon, two rear wheels and one front wheel damaged beyond repair, hay rack badly damaged. No damage to Company's equipment.
BRANDON DIVISION..	Nov. 9...	Solsgirth Yard, first crossing west of Solsgirth Station.	Extra West engine 3731 struck Durant auto, licence No. Man. 51-904, driven by M. Chychluk. Car was pushed along and then thrown to one side before engine brought to a stop. Damage to auto, $75. No damage to engine.
		BRITISH COLUMBIA DISTRICT	
VANCOUVER DIVISION	July 17...	Mile 105·6 Cascade Subdn. Hammond.	Extra 3635 West struck Dodge coupe BC 1-109 which was standing on track while driver closed crossing gates.

SUMMARY OF DANGEROUS PRACTICES OF MOTORISTS, DRIVERS OF OTHER VEHICLES, AND PEDESTRIANS AT PROTECTED RAILWAY CROSSINGS

CANADIAN NATIONAL RAILWAYS—CANADIAN PACIFIC RAILWAY

—	Number	Per cent
Vehicles passed directly in front of train or track motor	24	11·75
Vehicles ran into crossing gates, or under as they were lowered	119	58·34
Vehicles ran past crossing watchman's stop signal	15	7·35
Vehicles struck train or track motor	14	6·86
Vehicles stopped foul of train	3	1·48
Vehicles struck by train	14	6·86
Vehicles turned on crossings	2	0·98
Pedestrians passed under gates	4	1·96
Vehicle ran into wig-wag standard	1	0·49
Vehicle ran past red light signal	1	0·49
Vehicles stopped on crossing	3	1·48
Vehicle drove along track at crossing	1	0·49
Vehicles stalled on crossing	2	0·98
Boys holding down gates after train had passed	1	0·49
Total	204	100·00

AT PRIVATE CROSSINGS—CANADIAN PACIFIC RAILWAY

Vehicles struck by train	3	100·00

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DEC 4 1935

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of Messrs. Johnstone, Ritchie and Huckvale, on behalf of the Becker Lumber Company, Lethbridge, Alberta, for a ruling of the Board concerning the term "Fuel Wood," as contained in Canadian Pacific Railway Tariff No. W-170-A, C.R.C. No. W-3048, and Canadian National Railways Tariff No. W-190-D, C.R.C. No. W-704.

File No. 26901.64

RULING

By the Board:

This matter was placed before the Board for decision by written submissions of the parties. The application sets out that the Becker Lumber Company, doing business as a lumber merchant in Lethbridge, received a verbal order from Coal Producers, Limited, for three cars of fuel wood to be shipped to them at Coalhurst, Alberta; that applicant placed order for the said three cars of fuel wood with Lloyd Prentice of Norbuck, Alberta; that they were loaded and shipped by said Prentice to Coal Producers, Limited; that they were classified by the railway agent at Norbuck as fuel wood and billed at the rate applicable on fuel wood. It is also stated that the price paid was the standard price for fuel wood, whereas the price of mine props, the material the railway subsequently rated the shipment at, is nearly three times as high.

Applicant states the point to be determined is whether wood, shipped and intended to be used as fuel wood at the time of shipment, can be later reclassified in accordance with the ultimate use to which the purchaser puts the wood. Applicant alleges its contract with the railway was for the transportation of fuel wood; that this contract cannot be altered because of the fact that a third party, namely, Coal Producers, Limited, used the product shipped for other purposes.

The Canadian Pacific Railway states that Coal Sellers, Limited (which is the same company as Coal Producers, Limited, having the same office in Calgary, the mine being operated under the name of Coal Producers, Limited), advised that the Becker Lumber Company quoted them prices of "wood"; that Coal Producers, Limited, sent a written order to the Becker Lumber Company on January 3, 1934, for one carload of 3 feet 3 inch cogwood, dry and sound, with from 5-inch to 10-inch tops, giving reference to the Becker Lumber Company's letter of December 19, 1933. The railway states that the produc-

tion of the Becker Lumber Company's letter to Coal Producers, Limited, and the latter's original orders should throw considerable light on the type of wood ordered and delivered. The railway has furnished a copy of a letter from the Becker Lumber Company to Coal Sellers, Limited, dated December 29, 1933, reading:—

> "Following our letter of a few days ago, regarding price on 3′ 9″ round wood, 4-5″ top, dry, we beg to quote you a price of $6.40 per cord, delivered Coalhurst.
>
> "We trust this price will be such as to give us a trial order, and thank you in advance."

The railway states Mr. Lloyd Prentice, the shipper at Norbuck, was interviewed, but he advised that he could not locate the letters of instruction from the Becker Lumber Company with respect to the three cars involved. The cars were billed from Norbuck at the fuel wood rate because the contents were so described, but, upon investigation by an inspector of the Canadian Freight Association, the destination agent was instructed to collect charges based on the mine prop rate.

The railway states that Coal Producers, Limited, advised their officers that the material contained in these three cars was not used for fuel, nor was it ordered for fuel; that the company does not use wood for fuel in any way; that the term "cogwood" is commonly applied by the coal mines to the material used for holding up the coal in the tunnels, or stopes, and is referred to as mine props in the railway tariffs. The railway further points out that the material shipped and invoiced (copies of invoices being forwarded and on our file) was of different specified lengths and was shorter than the customary 4-foot lengths in which cordwood is shipped.

Concerning applicant's reference to the contract for transportation, the railway states there was no contract to transport the wood at any specified rate, as, in accordance with the terms of the bill of lading, the charges must be properly assessed in accordance with the tariffs in effect.

Applicant states it cannot be expected to police the contents of cars from point of origin to the time of their ultimate use. In reply, the railway advises that, while this is true, in view of the fact that dealers and shippers of materials of this nature are fully aware of the different rates which apply on fuel wood and mine props, they should, in quoting prices on such material, determine under what classification it would come.

With regard to the applicant's query as to whether wood shipped and intended to be used as fuel wood at the time of shipment can later be reclassified on account of the ultimate use to which the purchaser puts the wood, we would say that, upon what is before us, it is not proven that the material here in question was intended to be used as fuel wood at the time of shipment. The applicant has filed no reply to the statement contained in the railway's answer (copy of which was forwarded applicant) that:—

> "Coal Producers, Limited, advised the officers of this company that the material contained in the three cars in question was not used for fuel nor was it ordered for fuel, and that the company does not use wood for fuel in any way."

With respect to the question whether the rates on a commodity may differ according to the use to which it is put, it may be stated that, generally speaking, the principle of rate-making is that rates on a particular commodity may not vary according to the use to which it is put, although there are a number of exceptions to this general principle under special circumstances and conditions and such exceptions have not only been approved by the Board, but also directed by us in some instances. It has been held that the use of a commodity

may be properly taken into consideration in determining the measure of the rate thereon. The Board has recognized that where a carrier handles the raw material in and the finished product out, it may consider this and give a reduced rate on the inbound traffic (Volume 18, Board's Judgments and Orders, p. 441 at p. 447). There is in force a so-called manufacturers' scale of pulpwood rates, whereby the rate to the given destination on pulpwood for manufacturing and reshipment and conditioned upon the railway obtaining the outbound haul of the manufactured product in the form of wood-pulp, or paper, is materially below the rate applicable when these conditions are not met. By Order No. 15394, dated November 14, 1911, the Board ordered a rate of 3 cents per 100 pounds on ashes for fertilizing purposes from Vancouver and New Westminster to Piper's Siding; the rate contemporaneously in effect on ashes when not for fertilizing purposes was 6 cents per 100 pounds. Rates on sand vary according to use, and what is stated in Volume 22, Board's Judgments and Orders, page 216, is here apposite. Other instances might be cited.

So far as relates to wood used for fuel purposes, this has always received special consideration in the form of very low rates as a concession made in the general public interest in order to ensure supplies of fuel at as low a cost as possible. Reference was made thereto in the Board's judgment in the Western Rates case (17 C.R.C., p. 123). In 1920, when freight rates generally in Western Canada were increased 35 per cent, the judgment of the Board stipulated that "the increase in the rates on cordwood, slabs, edgings and mill refuse, all for use exclusively as fuel, should be limited to 10 per cent." In General Order No. 351, dated November 26, 1921, providing for decreases in rates, it was directed that "rates on cordwood, slabs, edgings and mill refuse, for fuel purposes, be restored to the basis in effect prior to September 13, 1920." This shows the clear intention that the rates on these commodities apply only when for fuel purposes. Reference may be made here to what is stated in this connection in Volume 23, Board's Judgments and Orders, at pages 241 and 281. The tariffs in force prior to 1920 carried the description "Cordwood (not exceeding 4 feet in length)"; they were then changed to read "Fuel wood (not exceeding 4 feet in length)," for the reason, it is stated, that shipments of logs of the ordinary cordwood length, or cordwood, were being shipped for manufacturing into lath and cordwood rates were claimed thereon and it was thought that this change in tariff description would meet the situation and confine the application of rates to this material when used for fuel purposes. It is stated by the railways that, during the period the last-named tariff description has been used, they have not, so far as they have any knowledge, delivered material at fuel wood rates when such material was not actually used for fuel purposes. Since this application was launched, in an effort to make the tariff description more definite, it has been changed to read "cordwood, in lengths not exceeding 4 feet, for fuel purposes only."

It seems, therefore, to be very clear that the tariff description, as in effect when these shipments moved, has had a well accepted meaning and, so far as our records show, it has never previously been contended by anyone in Western Canada that any different interpretation thereof should govern. This is a circumstance which indicates that, during a period of many years, all interested parties, including carriers, shippers and consignees, construed the tariffs as applicable only in the way the carriers have always applied them and as not capable of the construction for which the applicant is now contending. Even admitting that the term "fuel wood" is capable of the construction that it applies on fuel wood even when used for other purposes than as fuel, this Board, as well as the Interstate Commerce Commission, has said (Volume 23, Board's Judgments and Orders, page 54):—

> "Although doubt as to the meaning of a tariff must be resolved in favour of the shipper and against the carrier which compiled it, the

doubt must be a reasonable one and the terms of a tariff must be taken in the sense in which they are generally understood and accepted commercially. All of the pertinent provisions of a tariff must be considered together, and, if those provisions may be said to express the intention of the framers under a fair and reasonable construction, that intention must be given effect."

Applicant contends "admitting that the proper interpretation of 'fuel wood' is wood intended for use as fuel, it is submitted that the rate should be applied at the point of origin of the shipment and that, therefore, the fuel wood rate applies to such a shipment." Under the provisions of the bill of lading, as well as the Canadian Freight Classification by which the tariff is governed, the carrier has an undoubted right to determine the actual character of the freight, or the correctness of the weight shown by shipper, and correct the charges thereon subsequent to its shipment from point of origin. It is frequently impracticable to determine the accuracy of the description of the freight and the weight given by shipper at point of origin and a large percentage of the necessary corrections are made subsequent to shipments leaving the origin station. The carriers maintain an inspection staff for the express purpose of making such corrections en route or at point of destination.

For the reasons herein set out, applicant has not proven title to the fuel wood rate on the shipments in issue.

Ottawa, Ontario, May 4, 1935.

ORDER No. 51901

In the matter of the application of the Canadian Pacific Railway Company and the Canadian National Railways, hereinafter called the "Applicants," for permission to file, on less than statutory notice, a supplement to C.P. Tariff C.R.C. No. E-4746 and C.N. Tariff C.R.C. No. E-2274, to correct errors.

File No. 27612.113

Wednesday, the 8th day of May, A.D. 1935.

J. A. Stoneman, *Commissioner.*
G. A. Stone, *Commissioner.*

Upon its appearing that certain errors were made in publishing rates in the said tariffs, and its being desirable that the same be corrected as soon as possible,—

It is ordered: That the applicants be, and they are hereby, permitted to publish and file, on one day's notice, a supplement to C.P. Tariff C.R.C. No. E-4746 and C.N. Tariff C.R.C. No. E-2274, to correct the said errors.

J. A. STONEMAN,
Commissioner.

ORDER No. 51902

In the matter of the application of the Dominion Atlantic Railway Company, hereinafter called the "Applicant Company," for permission to file, on less than statutory notice, a reissue of Tariff C.R.C. No. 964, to correct a typographical error.

File No. 27612.114

WEDNESDAY, the 8th day of May, A.D. 1935.

J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon its appearing that through a typographical error an incorrect rate was published to Avondale, N.S., in Tariff C.R.C. No. 964,—

It is ordered: That the applicant company be, and it is hereby, permitted to publish and file, on one day's notice, a reissue of Tariff C.R.C. No. 964, to correct the rate to Avondale, Nova Scotia.

J. A. STONEMAN,
Commissioner.

ORDER No. 51906

In the matter of the application of the Buffalo and Fort Erie Public Bridge Authority, hereinafter called the "Applicant," for approval of Tariff C.R.C. No. A-4, covering tolls to be charged for the use of the Peace Bridge between Fort Erie, Ontario, and Buffalo, New York.

File No. 36795.1

WEDNESDAY, the 8th day of May, A.D. 1935.

J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant's said Tariff C.R.C. No. A-4 (cancelling Tariff C.R.C. No. A-3), covering tolls to be charged for the use of the Peace Bridge between Fort Erie, in the province of Ontario, and Buffalo, in the state of New York, on file with the Board under file No. 36795.1, be, and it is hereby, approved.

J. A. STONEMAN,
Commissioner.

ORDER No. 51911

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for permission to file a supplement to Tariff C.R.C. No. E-2036, on less than statutory notice, to correct an error.

File No. 27612.115

THURSDAY, the 9th day of May, A.D. 1935.

J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon its appearing that through error the reduction published in Supplement No. 12 to Tariff C.R.C. No. E-2036 was made applicable to Item 15A of Supplement No. 7 to the said tariff,—

It is ordered: That the applicants be, and they are hereby, permitted to publish and file, on one day's notice, a supplement to Tariff C.R.C. No. E-2036, to correct the said error.

J. A. STONEMAN,
Commissioner.

DEC 4 1935

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXV Ottawa, June 15, 1935 No. 7

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Applications of the Saanich Fruit Growers' Association and the British Columbia Coast Growers' Association for reduction in express rates on berries, carloads, from Victoria and British Columbia mainland points to points in the Prairie Provinces and Eastern Canada.

File No. 4214.1010

JUDGMENT

By the Board:

1

These applications relate to berries, namely, strawberries, raspberries, loganberries and blackberries. Aside from the question of the reasonableness of the rates *per se,* later dealt with herein, the applicants' submissions were, in large part, a plea that the Board direct a reduction in rates as a measure of assistance to the producers, the decrease in their net returns during the past three years, as compared with former years, being stressed, due, it was stated, to the low purchasing power in the Prairie Provinces. It was also set out that, while various cost items, such as for fertilizer, picking and packing, crates, etc., had been decreased, express rates remain unchanged, save for a reduction in 1934 to Calgary, Edmonton and some other points in Alberta.

Mr. Livesey, of the Saanich Fruit Growers' Association, referred to the application as being for a temporary general reduction in express rates to meet the low prices the producers are at present obtaining, so as to encourage production and increase the shipment of berries. The submissions of the British Columbia Coast Growers' Association were not stated, or construed, as covering merely a temporary rate reduction. Under present conditions, it is stated to be equally, if not more, remunerative to turn the production of berries over for jam manufacturing purposes, as, when so disposed of, various costs involved in shipping berries to prairie markets are not incurred, such as the expense of laying straw on the ground to keep the berries clean, cost of crates, etc., although the fresh fruit market is desirable because it provides a quicker cash return.

It was frankly stated at the hearing that it was applicants' intention that the reduced rates should accrue entirely to the producer rather than the consumer. In other words, the Board is asked to direct the express companies to

99821—1

substantially reduce their rates to pay a portion of the producer's expenses. Upon this being alluded to by the express companies, who pointed out that the reduced rates would not stimulate buying and, consequently, the express companies could not hope for any greater tonnage than at the present rates, applicants, in their subsequent written submission, somewhat modified their statement on this point by stating:—

> "In the first paragraph on page six of the Traffic Association's presentation, the stand is taken that reduced express rates would not stimulate buying. The situation is simply this, that if the industry was fortunate in moving the fresh crate berries on the prairie at the same prices as last year, and an actual reduction of 13 cents per case in the rate was made, it is quite true that 13 cents would go direct to the grower. However, there is no evidence to indicate last year's prices can be procured. A reduction of 13 cents would permit for a 13 cents lower prairie selling price and still return the grower the same price as last year. This reduction would give the industry an appreciable leeway in the matter of prairie prices which could be used to advantage in stimulating consumer demand."

So far as concerns this phase of applicants' submissions, briefly summarized above, i.e., reduced rates (apart from their reasonableness *per se*) to assist the producer, it may be stated that there has been no period since the establishment of the Board when appeals of this character have not been made to us, that rates should be reduced to assist, or enable, producers or industry to carry on their business on a profitable basis, or to meet their needs. Citing merely a few cases in recent years, such appeals were made by rice millers in 1925; live stock shippers in 1920 and 1925; dairy associations, on behalf of butter shippers, in 1922, 1925 and 1933; coal shippers in 1920; British Columbia apple producers in 1932; lumber shippers in 1933 and 1934; pulpwood shippers in 1932, 1933 and 1934; and others that are not here mentioned.

The Board has, on many occasions, clearly set out the situation in this respect under the provisions of the Railway Act. In Volume 22, Board's Judgments and Orders, at page 225, it is stated:—

> "A great deal of evidence was put in dealing with the condition of the British Columbia apple producer, and showing that he is suffering from the economic disturbance of the last three years, which has resulted in a general depression and low prices for his product. Similar evidence could be given to-day by almost every industry or producer and the situation in which the railway companies find themselves as a result of the same condition is well known. The limitations of the Board with regard to such conditions have been repeatedly stated and are summarized in the following extract from its judgment concerning application of the Saskatchewan Dairy Association *re* rates on butter (Volume 15, Board's Judgments, Orders, Regulations and Rulings, p. 202):—
>
> > 'With reference to Mr. Maclean's argument in the closing portion of the submission of September 16, which is, in substance, that the application for a reduction in the rating on butter is, to some extent at least, based on the premise that there is necessity for assistance to the dairying industry of the province of Saskatchewan, it may be pointed out that this is not an argument that can very well be given weight in considering a classification rating. This appeal is based on grounds that are beyond the powers of this Board. Appeals of this character are still made to the Board, although the Board has very clearly set out on numerous occasions the situation in this respect under the provisions of the Railway Act. For example in the

Board's judgment in the matter of the National Dairy Council of Canada *re* Rate on Butter, Western Canada to Vancouver and Montreal, it was stated:—

> 'Counsel submitted that having in mind the "necessity of developing mixed farming in Alberta" the rates were excessive. That is to say, the need of diversifying agricultural production was to be taken as a criterion of what the rate should be.
>
> 'At page 1680 of the evidence, counsel made an argument in this respect, from the standpoint of public policy, as to the necessity of stimulating milk production. At the same time, he frankly stated in this connection, "Of course, this is an argument that should be made more to the railways than to the Board."
>
> 'The method of presentation involved in this phase of the matter is not unusual, and on this account a word of comment making clear the nature of the jurisdiction of the Board is justifiable. The Board is given power to deal, *inter alia*, with the reasonableness of the rates. It is nowhere authorized by Parliament to be an arbiter of industrial policy. Opinions may differ as to the different lines of development, but the Board's functions in approaching a rate situation are concerned with ascertaining the reasonableness of the rate, not with applying to a rate situation a preconceived opinion as to what type or method of industry should be helped by a modification of the rate.
>
> 'In other words, while members of the Board may and do, as Canadians, sympathize with policies of economic development which may through increasing diversity lead to greater economic solidarity, it is not their general opinions but the powers conferred on them by the Railway Act which determines what they can do. Very wide powers, it is true, are given under the Railway Act; but the Railway Act is not to be construed as if it were a blank cheque to be filled in as members of the Board see fit. It is not the Board's function, as delegated by Parliament, to make rates to develop business, but to deal with the reasonableness of rates either on complaint or of its own motion.' "

The Interstate Commerce Commission has stated:—

> "The position of the growers is that such rates should be established as will permit them to market their product at a reasonable profit. No such test of the justness of a transportation charge can be admitted." Florida Fruit and Vegetable Association vs. A.C.L.R.R. Co., 17 I.C.C., 560.

Expressing it in another way, this question involves the proposal that rates should be fixed to bear a relationship to the fluctuations in the prices of commodities, because the prices governing determine the net return to the producer or the industry. Rates so fixed would have no permanency, nor would they necessarily have any relation to the cost of service or other factors that are controlling in the establishment of rates, and this has never been accepted in any country as a valid, practicable, or proper principle of rate-making. Aside from every other consideration, such a principle of rate-making would be impracticable, as the prices of some commodities fluctuate daily and, sometimes, such changes are very substantial. General increases and decreases in rates have been based upon cost of operation to which the carriers are subjected. Cost of transportation does not go up and down in step with commodity price levels and fluctuation in commodity price levels does not result from the rates charged for transportation, as instances might be cited where, although the rates remain unchanged, the spread in price over a given period was several times the total rate to market. That is the situation with respect to the commodities here under consideration. Again,

there is to be found a range in prices at different points which bears no relation to the difference in rate to such points. To illustrate the impracticability of the proposal, we might point out that the Railway Act requires that, unless the Board, by order, otherwise designates in individual cases, there must be thirty days' notice of increases in rates and three days' notice of reductions. Aside from the unfeasibility of obtaining immediate data concerning all price fluctuations in all parts of the country on the vast number of commodities and articles handled, rates, based on price fluctuations, could not possibly be changed to keep in step therewith. What is stated in Volume 24, Board's Judgments and Orders, pages 382 and 383, with regard to the relation between freight rates and prices, is here apposite. This is a topic that could be enlarged upon at considerable length. Views are frequently expressed on this point which indicate loose and uninformed thinking.

2

Victoria-Vancouver Differential

The express rates on berries, carloads, as well as other fruits and vegetables not included in this application, from Victoria are based on a differential over Vancouver, which is, at present, 25 cents per 100 pounds. The differential on less than carload fruit shipments is 30 cents; on first class express rates, varying amounts up to 85 cents; on second class express rates, up to 55 cents. With respect to berries only, a reduction in the differential to 7 cents is applied for. It is stated by applicants that, with respect to freight rates, the Victoria rate is 3½ cents over Vancouver; that there is no difference in the time taken to reach Vancouver, as, in both cases, namely, via express or freight service, the cars move on the same trains and barges, except on rare occasions when a special barge is put on for express movements. The submissions of the Express Traffic Association set out in detail the handling of the empty express refrigerator cars by barge and rail from Port Mann and Vancouver, the various switching operations necessary at Victoria in connection with the movements of the cars for icing, precooling and loading, as well as the switching and handling by barge and rail, subsequent to loading, from Victoria to Port Mann and Vancouver, also the additional switching at points last named to ice-house for reicing and to the passenger train for movement to destination. All of these services are performed without any charge to either shipper or consignee, except the differential of 25 cents per 100 pounds. A copy of the association's submissions was forwarded applicants, consequently it is unnecessary to here repeat the details of the various services performed in the movement of carloads of berries by express service from Victoria.

Applicants suggested that refrigerator cars going to Vancouver island loaded with meats might be held over for loading berries eastbound. Freight refrigerator cars are used in this meat traffic, which are not equipped to move in express service on passenger trains, and fruit express refrigerators are unsatisfactory for the carriage of meats. There being a clear distinction between the construction and equipment of express and freight refrigerator cars, applicants' suggestion is not feasible. The long empty haul of express refrigerator cars is a factor in determining the cost of the movement of fruit.

Prior to 1927, there were no through carload express rates on berries from Victoria, service from the island being by freight. Previous to 1923, the rate for freight movement from Victoria to Vancouver was 41 cents per 100 pounds, minimum weight 20,000 pounds per car, or a minimum charge by freight of $82 per car. In 1923, a freight rate of 25 cents per 100 pounds, minimum weight 20,000 pounds, was published, described as a proportional rate applicable only on shipments loaded in express cars and forwarded east of Vancouver by express. There was an additional charge for switching to icing plant at Vancouver of

$15 per car, so that, from 1923 to 1927, the charge from Victoria over Vancouver was $65 per car. In 1927, through carload express rates were published on a differential over Vancouver of 30 cents per 100 pounds, minimum weight 17,000 pounds, or $51 per car, which was reduced in 1934 to 25 cents, or $42.50 per car. The applicants now ask that the service be performed at a cost to them of $11.90 per car.

Regular express traffic from Victoria to Vancouver is carried on passenger steamers on which carloads of berries cannot be handled, consequently, the movement of this fruit in carloads from Vancouver island to the mainland is a special service necessarily performed by the railway for the express company and has no relation whatever to the freight rate difference. The regular third class freight rate that would apply in the absence of the commodity tariff from both Victoria and Vancouver to Calgary is $1.45 and to Winnipeg the regular third class rate difference is but 2 cents. It will be seen, therefore, that, in establishing the freight rate difference, the railways were held down by the published class rates. The basis for construction of express rates to and from Victoria has never been the same as that governing freight rates, so that such comparisons are of no probative value in determining the reasonableness of the express rates. There is no uniformity, or fixed basis, with respect to the freight rates, as they are controlled by various circumstances and conditions and these are, in turn, dissimilar to those existing with respect to express movements. To cite merely one example, on grain from prairie points for export the Canadian National Railways publish the same rate to Vancouver and Victoria. In 1931 there was an application before the Board to direct the Canadian Pacific Railway to publish the same export rate to Victoria as to Vancouver, which was refused (Volume 21, Board's Judgments and Orders, page 231). The additional cost of handling grain from Vancouver to Victoria, via barge to Ladysmith and Esquimalt and Nanaimo Railway, was estimated at $42.70 per car. This is the route via which express carload traffic is moved when handled via the Canadian Pacific Express Company.

As indicative of the cost of handling these carload berry shipments from the island, the Canadian Pacific Express Company state that, during the 1934 season, they handled seven cars of berries from Victoria, the revenue at the 25-cent differential being $303.42, while, out of this amount, they had to pay the Canadian National Railways $220.79 for special switching, etc., and, in addition, the railway provided a special train and barge service for one of the cars at a cost of $166.17, making a total cost for these services alone of $386.96, or a loss of $83.54 on the island transportation which had to be absorbed out of the rate east of Vancouver.

In the same season the Canadian National Express moved twelve cars of berries from the island for prairie points on which they earned, under the differential, $524.37. Out of this they paid $146.18 to the Canadian Pacific Railway for special switching; there was a cost of $177.63, representing the difference between regular rates of pay and overtime for switching required after hours, or a total of $323.81. In adition, on May 30, owing to storms and tides, the barge with two cars of berries missed the regular train from Port Mann and it was necessary to provide a special train as far as Jasper at a cost of $569.26.

The above figures are in addition to, and take no account of, the expense incurred by the Canadian Pacific and Esquimalt and Nanaimo Railways in the movement of the empty car to the island by barge and rail, the switching performed by the last named railway at Victoria and the return movement by rail and barge to Vancouver. The same remarks apply to the corresponding service performed by the Canadian National Railways for the movement by express. These operations are set out in detail in the submission of the Express Traffic Association already referred to herein.

It is very clear that, under the present differential, the revenue falls far short of meeting the expense involved in handling carload express fruit traffic from Victoria and we are not justified in directing any reduction therein.

3

Rates from British Columbia Mainland Shipping Points to Prairie Destinations

The application, under this heading, is based almost entirely upon the plea discussed in section 1 hereof. There was no contention that the present rates are unreasonable in themselves, or that there is undue preference or unjust discrimination. There was a brief statement by applicant that "it is a matter of record that transportation costs have been materially reduced since 1929." We were not furnished with any data on this point. It is general knowledge that, with the smaller volume of traffic at present moving, there has been no appreciable reduction in cost of operation, which is amply borne out by the express statistics for 1933 (the last year available) issued by the Dominion Bureau of Statistics, showing net operating revenue in that year of only $6,014.83, for the Canadian National Express, and $94,162.20 for the Canadian Pacific Express Company, and these figures are exclusive of taxes, amounting to $54,312.87 in the case of the Canadian National Express and $79,085.08 in the case of the Canadian Pacific Express Company.

Generally speaking, prior to 1921 there was in force a blanket rate of $2 from all shipping points to all prairie destinations Winnipeg and west, except to some branch line points which were slightly higher. In 1921 there was a 20 per cent increase, making the rate $2.40, which has since been maintained, except for a voluntary reduction made by the companies in 1934 to $2 to Alberta points. A reduction of 25 per cent from the current rates is applied for, namely $1.50 to Alberta points and $1.80 to destinations in Saskatchewan and Manitoba. These rates would be substantially lower than at any time previously in force, notwithstanding that the cost of operation is still at a much higher level than when the $2 rate was in effect. This express fruit rate has been referred to in previous judgments of the Board and has always been considered as a low rate. The low express commodity rates were referred to in the judgment of 1919 (Volume 9, Board's Judgments and Orders, page 133) as being the "producers' rates," which it was in the public interest to maintain upon as low a basis as consistently possible. Therefore, while authorizing a general increase in other express rates of approximately 22 per cent at that time, no increases were authorized in the commodity rates. In 1921, while first class express rates were further increased 35 per cent and second class express rates 25 per cent, an increase of but 20 per cent was allowed in commodity rates, because the traffic carried thereunder consists largely of food and food products upon which it was considered no greater increase should be imposed than absolutely necessary (Volume 10, Board's Judgments and Orders, page 504). From this it will be noted that the rates here in question, originally established on a low basis much below the standard express rates, have been subjected to but one increase and have not been increased to anything like as great an extent as other express rates Their low basis is illustrated by the following comparison:—

FROM MATSQUI AND MISSION

To	1st Class	2nd Class	Berries Carloads	Per cent of 1st Class	Per cent of 2nd Class	1st Class Freight
Calgary	605	425	200	33	47	219
Edmonton	690	480	200	29	41	261
Kerrobert	850	595	240	28	40	320
Saskatoon	955	670	240	25	36	314
Regina	960	670	240	25	36	314
Weyburn	990	685	240	24	35	324
Yorkton	1,080	750	240	22	32	348
Brandon	1,080	750	240	22	32	348
Winnipeg	1,160	805	240	21	30	372

Inasmuch as the shipper using the express service for shipping his goods on passenger trains receives a much more expensive and efficient service than by freight, the charge should be considerably higher than the freight rate, but this is not the case with respect to the traffic here under consideration to anything like the difference existing with respect to other express traffic. To Winnipeg, the minimum charge for a carload of this fruit by freight is $360; by express service on passenger trains it is at present $408 and the charge applied for is $306. To Calgary, the minimum charge for a carload by freight is $290; by express service it is at present $340 and a charge of $255 is applied for.

Under the express service there is permitted the privilege of loading in transit at one intermediate point and, upon the prairies, cars may be opened and partially unloaded at three intermediate points through which the car passes from point of shipment to final destination, for which a charge of $6 is made for each such stop. This is an important concession owing to the difficulty frequently experienced in disposing of large quantities of berries in any one place. It has the effect of actually extending the benefit of low carload rates and refrigerator service to less than carload shipments. There is no such concession with respect to freight movements.

The present rates apply not only on the berries here referred to, but also on other fruits and vegetables. The granting of this application would immediately throw the rates on these other commodities out of line and create an undue preference and unjust discrimination. It would also involve the express rates on the same commodities from the Niagara District to Winnipeg, etc. The same rate applies from the Niagara District to Winnipeg, namely, $2.40 per 100 pounds.

The present rates are on a very low basis. It has not been contended that they are unreasonable *per se*. There is no justification for the Board directing a reduction therein.

4

RATES FROM BRITISH COLUMBIA MAINLAND SHIPPING POINTS TO EASTERN CANADA

A carload rate of $3 is applied for without any reasons therefor being advanced, other than the suggestion that the carriers can quite easily handle straight express cars to the east for $554.40, i.e., 18,480 pounds at rate of $3. How the minimum of 18,480 pounds is arrived at is not disclosed. The present minimum is 17,000 pounds, which was established some years ago at the request of the British Columbia shippers. Over a period of years, the carload berry rates from British Columbia mainland points to Eastern Canada have been reduced as follows:—

Year		Year	
1923	$6 00	1931	4 60
1924	5 25	1932	4 00
1928	5 00	1934	4 00

The present rate of $4, carload minimum weight 17,000 pounds, cannot be considered unreasonable. From Matsqui and Mission to Montreal it produces earnings of $680 per car, or approximately 24 cents per car mile, this latter figure being only 69 per cent of the figure taken by the Board in 1919 and 1921, in the judgments already cited, as the average operating cost of handling an express car upon a passenger train, namely, 34·70 cents per car mile. The present carload rate is 25 per cent of the first class express rate and 35 per cent of the second class express rate.

With respect to this movement, applicants stated:—

> "The eastern business is problematical. A great deal depends on the earliness of the season in Ontario, the volume of the eastern supply, and British Columbia conditions. It could be a fine safety valve for our surplus, and might be the means of relieving our marketing situation during times of congestion, which are almost daily during the shipping season."

We do not find the present rate unreasonable.

5

In their last submission, the applicants advanced an alternative proposal, i.e., a somewhat higher carload minimum weight in connection with the reduced rates, namely, 19,000 pounds per car. The carload minimum weight was formerly 20,000 pounds and the express companies stated that it was contended by fruit shippers that this minimum was too high for berries and, as a result of negotiations, the express companies reduced the minimum to 17,000 pounds without a corresponding increase in the rate to produce the same revenue per car. Applicants' proposal, therefore, simply means that, having had the minimum weight lowered without any rate increase, they now ask that the minimum weight be restored to a somewhat lower figure than formerly, but that the rate be further reduced. The express companies state that when, in 1932, the shippers applied for an additional, or third, unloading point privilege, they advised that three towns could not absorb more than 17,000 pounds of berries and, in view of the present proposal, the position taken by the applicants appears inconsistent. This proposal is a matter outside of the original application and, as such, should be the subject of negotiation between the shippers and the express companies. While we are refusing the applications, for reasons fully given herein, it is at all times open to the shippers and the express companies to negotiate revision of shipping privileges and rates and our denial of the applications is not to be taken as standing in the way of any further negotiations between the parties and any subsequent revision in the rates as agreed upon in the same way that their previous negotiations resulted in the various changes already herein alluded to.

Ottawa, Ont., May 3, 1935.

The Deputy Chief Commissioner dissenting.

Applications of the Saanich Fruit Growers' Association and the British Columbia Coast Growers' Association for reduction in express rates on berries, carloads, from Victoria and British Columbia mainland points to points in the Prairie Provinces and Eastern Canada.

File No. 4214.1010

JUDGMENT

GARCEAU, DEPUTY CHIEF COMMISSIONER (dissenting):

I cannot concur in the judgment rendered in these various applications.

It is stated in the judgment, at p. 4: " It " (the Board) " is nowhere authorized by Parliament to be an arbiter of industrial policy. Opinions may differ as to different lines of development, but the Board's functions in approaching a rate situation are concerned with ascertaining the reasonableness of the rate, not with applying to a rate situation a preconceived opinion as to what type or method of industry should be helped by a modification of the rate."

I agree that the Board is concerned with ascertaining the reasonableness of the rate but I do not agree that a rate might be reasonable "per se" *if it does not first take into consideration the possibility for traffic to bear or pay such a rate,* especially when, as in the present case, it affects a basic industry.

The controlling factor of rates is not the interest of the carrier but the interest of the public and the Board, in my opinion, has not only the authority to impose *such rates as traffic can bear* but has the duty to do so because railways as common carriers are public servants and the welfare of the public should be considered first, and by " public " I mean the industry actually concerned.

This is more evident when we consider that one of the railways was built by the country to further the development of trade, interchange of commodities, the welfare of the country, and the other was heavily subsidized for the same purposes.

If consideration of the cost of service were the controlling factor, why should the government of this country, the provinces, the municipalities, have subsidized the railway carriers? They have done so in order that when public need demands sacrifices of the railways, they would do so because these *special grants* were for that *special purpose,* and the Board, at least in my opinion, is the authority delegated by Parliament to see that the railways fulfil their obligations to the public.

The Board was given birth with the sole object of protecting the public against the railways.

There is no provision in the Railway Act similar to the Amercan law regulating the Interstate Commerce Commission and the railways. They have section 15 (*a*) which advises the Interstate Commerce Commission " to give due consideration to the need of revenues sufficient to enable the carriers under honest, economical and efficient management, to provide . . . adequate and efficient railway transportation service."

Even that special disposition of the law hereinbefore referred to is interpreted by four of the Interstate Commerce Commissioners explicitly on page 73 of Ex Parte 115, in the matter of Increase of Freight Rates and Charges, 1935, and it is not denied by the others, that it is to be considered only one of the elements or factors in determining the reasonableness of rates: "As badly as the railways need more money, their right to obtain it is not an unqualified right."

It has been held by the courts of the United States even under the statute above referred to (section 15 (*a*)):—

> " The rights of the public are not to be ignored. It is alleged here that the rates prescribed are unreasonable and unjust to the company and to its stockholders. But that involves an inquiry as to what is reason-

> able and just for the public. . . . The public cannot properly be subjected to unreasonable rates in order simply that stockholders may earn dividends. . . . If a corporation cannot maintain such a highway and earn dividends for stockholders, it is a misfortune for it and them which the constitution does not require to be remedied by imposing unjust burdens upon the public."

And in another case, it was held that:—

> "The facts disclosed by the record compel the conclusion that if competition shall continue in the future as in the past, appellee will not be able upon any rates within constitutional protection against reduction to earn a reasonable return upon the value of its property employed in the public service. The due process clause of the Fourteenth Amendment safeguards against the taking of private property, or the compelling of its use, for the service of the public without just compensation. . . . But it does *not assure* to public utilities the *right* under all circumstances to have a return upon the value of the property so used. The loss of, or the failure to obtain, patronage, due to competition, does not justify the imposition of charges that are *exorbitant and unjust to the public.* The clause of the constitution here invoked does not protect public utilities against such business hazards."

The principles sanctioned in these judgments ought to govern this Board so that public recovery be considered first.

The sooner the country can get back to a fair degree of prosperity, the better for the railways and they, like business generally, should be expected to contribute their full share to the common weal.

Judgments on the various applications quoted in the majority judgment ignore this fundamental principle determining the reasonableness of rates, i.e., "*the possibility by traffic to pay such rates.*" The application of this principle is a "sine qua non" condition to the existence of traffic.

It has been admitted in Parliament and by Parliament that "changed conditions required changed laws" and I will add "changed decisions."

In Ex Parte 115, Interstate Commerce Commission, the same principle is also sanctioned (p. 62): "It must be evident that a railroad rate structure which was well adapted to the conditions of fifteen or twenty years ago, is not necessarily well adapted to the conditions which prevail to-day."

The railways, public carriers, cannot recover their earning power before a general resumption of trade, and this general revival of trade cannot be brought about unless the railways give the proper facilities at the cost the traffic can bear, for the interchange of commodities.

The primary producers, the fruit growers, are the public whose interest must be first considered and, in doing so, the railways will help recovery and will benefit directly themselves by an increase of traffic not only on such commodities but on their general traffic, owing to the increase in the buying power of the producers. . . . . .

I agree with the submission of the British Columbia Coast Growers' Association, viz.:—

> "When a refrigerator car is required at Victoria for loading either freight or express berries for the prairies, either the freight or express department arranges with Vancouver for the empty, or might I point out that both departments usually keep a supply at Victoria for this and other purposes. The empty leaves Port Mann on the Canadian National and Vancouver on the Canadian Pacific, and is taken by a barge for either express or freight and delivered to the Victoria yards. The empty is then placed at either the Wilson Cold Storage plant or Ogden Cold

Storage plant for loading of berries after they have been precooled. Let us point out here that identically the same switching crew, the same engine, make the spots at the cold storage plants and after loading switch for furtherance to Vancouver.

"In the case of a freight car, the island people deal with the Freight Department, in the case of the express, they deal with the Express Department of either roads, but it is a matter of record with the carriers, and your investigation will support our contention in this connection, that the method is precisely the same, whether it be freight or express. Even the same barge hauls cars to Vancouver.

"Upon arrival in Vancouver, the same engines make the switches, in the case of freight to the freight yards, and in the case of express to the passenger yards, after their delivery for re-icing to the ice house. The same icing crews perform the icing service, whether it is express or freight.

"The high winds, tides, etc., suggested by the Traffic Association are applicable to freight cars, and weather conditions apply the same to freight as express.

"Switching at Port Mann and Vancouver on freight is absorbed by the Freight Department, the same as the switching at both points is absorbed by the Express Department on express, and there is no point to be made therefrom."

We must not confuse carloads with L.C.L. shipments and I agree that when a carload is shipped from Victoria to the mainland, it is at the same cost, the same risk to the railway, whether by express or freight. I cannot see why there is such a difference between the freight rate and the express rate from Victoria to the mainland. This part of the application ought to be granted even if the other reductions are debatable.

As to the other applications, I would advise the railways to grant the rates asked for, for a period of six months, the Board to adjudge definitely at the end of that time.

May 11, 1935.

ORDER No. 51958

In the matter of the applications of the Saanich Fruit Growers' Association and the British Columbia Coast Growers' Asosciation for a reduction in express rates on berries, carloads, from Victoria and British Columbia mainland points to points in the Prairie Provinces and Eastern Canada.

File No. 4214.1010

MONDAY, the 20th day of May, A.D. 1935.

S. J. McLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading the submissions filed in support of the applications and on behalf of the Express Traffic Association of Canada,—

It is ordered: That the applications be, and they are hereby, refused.

S. J. McLEAN,
Assistant Chief Commissioner.

In the matter of the subway ordered to be constructed by the Canadian National Railways on Bloor Street, in the City of Toronto, by the Order of the Board No. 35153, dated June 5th, 1924; and in the matter of the application of W. J. Boland in respect thereof:

File No. 32453.2

JUDGMENT

McLean, Assistant Chief Commissioner:—

This application arises out of that part of the Order of the Board No. 35153, dated June 5, 1924, directing the Canadian National Railways to construct a subway, of the full width of the street, under the track of their Newmarket Subdivision on Bloor street west, in the city of Toronto, in accordance with plans to be filed by the railway for the approval of the Chief Engineer of the Board; the subway to be completed by the first of January, 1925, and the question of distribution of costs, interest, or other matters to be further reserved for order of the Board.

A number of plans were filed for approval, in pursuance of the order, the final plan being No. C-829, which was approved by the Chief Engineer January 31, 1925. This plan shows a slope on applicant's property of approximately seven feet back from the street line.

The subway, so far as this property is concerned, was not constructed in accordance with the approved plan, that is, there is no slope as provided by the plan. To build the slope shown on the plan it would have been necessary to enter upon and take part of applicant's land. After the completion of the work, and upon the report of its Chief Engineer, the Board, by order dated August 21, 1925, authorized the use and operation of the subway.

An application to invalidate the Chief Engineer's approval of plan No. C-829 was refused. On further application by applicant the Board, by its order, declared that in issuing Order No. 35153 it did not authorize the taking of any of applicant's land in connection with the construction of the Bloor street subway, and that the approval of plan C-829 by its Chief Engineer is not to be construed as giving such authority.

Questions having to do with the construction of the said subway as it affects applicant's property have been before the courts in one form or another at different times and covering a period of years. When the railway took steps under the Expropriation Act, the provisions of which Act are, by its Special Act, expressly made applicable to the company and its undertaking, in lieu of the expropriation provisions of the Railway Act, and proceeded to take possession of his land to enable the company to comply with the requirement of the Board's order, the applicant, or his predecessor in title, brought an action in the Supreme Court of Ontario to restrain the company from entering upon and taking possession of a strip of land belonging to her. The action was dismissed on the ground that the company was entitled to take the land under the Expropriation Act. This judgment was affirmed, on appeal, by the Appellate Division of the Supreme Court of Ontario, a majority of the court being of the opinion that the taking of the lands was justifiable under the provisions of the Railway Act.

A petition by the railway to the Exchequer Court of Canada, under the Expropriation Act, for a warrant of possession of applicant's lands was dismissed. The Supreme Court of Canada, upon a reference to it as to the jurisdiction of the Exchequer Court in connection with the lands in question and the application of the Railway Act and Expropriation Act, respectively, thereto, held that the Exchequer Court had jurisdiction.

On appeal by special leave the Judical Committee of the Privy Council reversed the decisions of the Supreme Court of Canada and the Ontario Appellate Court, holding that the provisions of the Expropriation Act were available

to the National Railways under its Special Act only if the land was required for the undertaking of the company, and that as the land in question was not required for the railway itself, and the subway was not part of the railway undertaking, the provisions of the Expropriation Act did not apply. That, as the Railway Board had not by its order authorized the taking of any land, applicant's land had not been validly taken, either under the Expropriation Act or the Railway Act, and that accordingly appellant was entitled to an injunction. The judgment did not decide the power of the Railway Board to direct the giving of access involving the taking of land, merely that it had not done so. The case is reported in 32 C.R.C. 128.

Subsequent to the Privy Council decision applicant brought a further action in the Supreme Court of Ontario, claiming damages for the cutting down of the ground in front of his property, and for continuing damage caused by the faulty or improper construction of the subway, and asking that the railway be ordered to complete the subway in relation to his property, so as to remedy the wrongs complained of.

The court found that the railway had constructed the subway under a mandatory order of the Board, in accordance with the plans approved by its Chief Engineer, with the exception of the slope in front of applicant's property, above referred to, to do which it would be necessary for the railway to enter upon and take part of his land, which it was restrained from doing by order of the court, and held, for the reasons set out in the judgment (42 C.R.C. 211), that the court was without jurisdiction to entertain the action. The redress, if any, was a matter for the Board under the provisions of the Railway Act.

An appeal was taken from the judgment to the Court of Appeal for Ontario. The appeal was dismissed, the court holding that, under the authority of Privy Council decisions, the provisions of the Railway Act and not the provisions of the Expropriation Act applied to the taking of the land in question. In his reasons for judgment Mr. Justice Davis, who delivered the judgment of the court, said:—

> "Had the matter of the change of level of the street in front of the plaintiff's land been brought to the attention of the Railway Board, no doubt it had power to direct something to be done with reference thereto either by the city or the railway company, but no such order or direction was applied for."

And:—

> "The plaintiff's only remedy was by arbitration, as provided by the statute." 43 C.R.C. 62, at pp. 65-66 respectively.

The present application was no doubt launched as the result of this judgment. In it the applicant asks for an order "directing the Canadian National Railway Company to properly protect the lands of your petitioner by completing the work on the subway in a workmanlike manner and also for an order appointing an arbitrator to hear, settle and determine the damages suffered by your petitioner by reason of the construction of the subway and the lowering and change of the grade in front thereof."

The matter was heard at a sitting of the Board held in Ottawa, April 2, 1935, in the presence of counsel for the parties.

Dealing first with the question of the appointment of an arbitrator. Even assuming that the arbitration clauses of the Railway Act apply to this situation —which, in my opinion, for the reasons I shall discuss later, is not the case— there is no power given the Board in the arbitration provisions to appoint an arbitrator. The Act itself provides who the arbitrator shall be and prescribes the procedure. This part of the application, therefore, must fail for want of jurisdiction.

That there is power in the Board to require any works it has jurisdiction to direct or permit to be completed in a satisfactory and workmanlike manner I

am in no doubt. It must be so if the Board is to be in a position fully to exercise the powers conferred upon it by the Act.

In this view the question then arises whether the work here, in relation to applicant's property, was constructed in a safe and workmanlike manner. If not, in what respect did the railway fail or neglect to do so, and what order in the particular circumstances it is competent for the Board to make.

Applicant complains of the refusal of the company either to provide the slope in front of his property, as shown on the approved plan, or to build a retaining wall where the level of the street has been lowered by the construction of the subway. The railway company's answer is that this work could only have been done either by lessening the width of the street, which would have been contrary to the Board's order, or entering upon and taking possession of applicant's land, which it had been restrained from doing by order of the court.

There was a sharp difference of opinion between counsel as to the effect of the Privy Council decision, Mr. Boyce for the applicant contending that the injunction was against the expropriation of the easterly thirty feet of applicant's property, and that the frontage on Bloor street, cut down by the subway and left, it was alleged, unprotected, was not interfered with by the judgment. Mr. Laidlaw for the railway, on the other hand, strongly argued that no distinction is made in the judgment of the Judicial Committee between different portions of applicant's property, and that the judgment could only be read, therefore, as including all his lands.

Whatever may be the true interpretation of and the effect to be given the judgment, the Board is relieved from the necessity of deciding through the expressed willingness of the owner to allow the railway authorities to go on his land to do the necessary protection work. Reference may be made to the Notes of Hearing, at p. 190, on this point:—

> "The Assistant Chief Commissioner: You state in substance that in the construction of that work there is no interference with your porperty, there is nothing to prevent you going on.
>
> "Mr. Boyce: We have no objection, and never had.
>
> "The Assistant Chief Commissioner: That is where we are?
>
> "Mr. Boyce: We want the work done, and have always wanted it done. The only resistance we made, and made strenuously, and what is the cause of all this controversy, is what we made successfully before the Privy Council, as to the thirty feet taken under the expropriation."

Undoubtedly, as an adjacent or abutting landowner, Mr. Boland was entitled to have his property properly protected. The plans, in accordance with which the subway was authorized, provided for such protection. That the work was not completed in strict compliance with the plans was due, in a large measure if not entirely, to the action of the applicant himself in taking out the restraining order. Now that it is made clear that the injunction was intended only to prevent the taking of the easterly thirty-foot strip of applicant's land, and that the frontage to his property on Bloor street was not involved, no good reason is apparent why the work should not be completed in full compliance with the order. In the Board's view this should be done.

There remains to be considered applicant's claim for compensation for the injurious affection to his land and the Board's powers under the Act to deal with the question.

Mr. Boyce admitted at the hearing that, under the authority of the judgment of the Board in C.N.R. *et al* v. Bell Telephone Company of Canada, *et al* (Toronto Northwest Grade Separation cases), 40 C.R.C. 29, compensation could not be claimed under 257 of the Railway Act, the section under which the order in question was made, as the highway was carried under the railway and the section provided for compensation only where the railway was carried across or along the highway, or was diverted, and that therefore the arbitration clauses of the Act did not apply (Notes of Hearing, p. 193). He contended, however,

that, under the same authority, Section 39 of the Act gave the Board ample power to provide for compensation. C.N.R. and Bell Telephone Co., supra, at p. 39.

Mr. Laidlaw's argument was that a careful reading of the cases shows that what they decided was that Section 39 is applicable only to a case to which section 257 applies, as the order here was made under that section. This view appears to be at variance with that of the Judicial Committee of the Privy Council in Bloor street and Royce avenue subway cases, 37 C.R.C. 203, at p. 211, citing with approval the Judicial Committee decision in Toronto Ry. Co. v. City of Toronto, 25 C.R.C. 318. These cases decide that if an order can be supported under sec. 39 it is unnecessary to consider whether it could also be supported under another section of the Act.

By itself, and apart from the question of the bearing the provisions of the Canadian National Railway's Special Act, as amended in 1929, may have upon the application of section 39, I would have no difficulty in deciding that that section gives the Board power to provide for the payment of compensation in this case. Section 2 of the amending Act referred to, chapter 10 of the Statutes of 1929, provides that "all the provisions of the Expropriation Act, except where inconsistent with the provisions of this (the Special) Act, shall apply *mutatis mutandis* to the company:" and that:—

> "(*d*) The compensation payable in respect of any lands or interests therein taken by the company under the provisions of the Expropriation Act as made applicable to the company by this Act shall be ascertained in accordance with the provisions of the Expropriation Act, and for that purpose the Exchequer Court shall have jurisdiction in all cases relating to or arising out of any such expropriation or taking and may make rules and regulations governing the institution, by or against the company, of judicial proceedings and the conduct thereof: Provided that such compensation may, in any case where the offer of the company does not exceed two thousand five hundred dollars, be ascertained under the provisions of the Railway Act, beginning with notice of expropriation to the opposite party. The amount of any judgment shall be payable by the company."

No offer was made to the applicant for any amount, and consequently the present case is not within the proviso.

The powers vested in the Board under section 39 in respect of works ordered by it exist only when not "otherwise expressly provided." To attempt to deal with the question of compensation under the section would be in direct conflict with the above recited provisions of the Special Act. Where there is a conflict between the provisions of the Railway Act and the provisions of the Special Act, under section 3 of the Railway Act the provisions of the Special Act prevail.

Counsel for the applicant suggested that the 1929 amendment to the Special Act applied only to damages accruing since the passage of that Act. I cannot accept this view. The Act speaks from the date it received the Royal Assent. It was in force when the present application was made. It is in force today and regard must be had to its provisions if they have a bearing on the Board's power to deal with the application. It has been held that in the absence of express legislative authority enabling it to do so, it is beyond the jurisdiction of the Board to make a *nunc pro tunc* or *ex post facto* order.

In my view, therefore, the effect of the express provisions in the company's Special Act is to take away the Board's power under 39 to deal with the question of compensation, and to vest that power in the Exchequer Court.

The order consequently will be that the railway company, at its own expense, build a slope on applicant's land in accordance with plan No. C-829. The proposed order is directed upon the assumption that the applicant will interpose no objection to entry upon his lands for the purpose of completing the work.

May 17, 1935.

Concurred in by the Deputy Chief Commissioner and Commissioners Norris, Stoneman and Stone.

ORDER No. 51947

In the matter of the application of Walter Joseph Boland, K.C., of Toronto, Ontario, hereinafter called the "Applicant," for an Order directing the Canadian National Railways properly to protect applicant's lands on the south side of Bloor Street West, Toronto, by completing in a workmanlike manner the work on a subway under the tracks of their Newmarket Subdivision, required to be constructed under Order No. 35153, dated June 5, 1924, as amended by Order No. 35308, dated July 10, 1924; also for an Order appointing an arbitrator to hear, settle, and determine the damages suffered by the applicant by reason of the construction of the said subway and the lowering and change of the grade in front thereof.

File No. 32453.2

THURSDAY, the 23rd day of May, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, April 2, 1935, in the presence of counsel for the applicant and the railway company, and what was alleged,—

It is ordered:

1. That the Canadian National Railways be, and they are hereby, required, at their own expense, to build a slope on applicant's land at Bloor street west, in the city of Toronto, province of Ontario, in accordance with Plan No. C-829 on file with the Board under file No. 32453.2.

2. That the application for the appointment of an arbitrator be dismissed.

S. J. McLEAN,
Assistant Chief Commissioner.

Application of Mr. P. G. Davies, M.P., on behalf of Fishermen in Northern Alberta for a review of the Express Rates on Fish, in carloads, from Edmonton and points north thereof in the Province of Alberta to Chicago, Ill., Toronto, Ont., Montreal, Que., and New York, N.Y.

File No. 27101.38

JUDGMENT

BY THE BOARD:

This matter was placed before us for decision by written submissions of the parties. The application alleges that the present rates represent discrimination against the shippers of fish in northern Alberta, which is shown by a comparison of the rates from Prince Rupert, B.C., with those from northern Alberta points, as indicated by the following illustrations as set out in the application:—

"(*a*) Prince Rupert to Chicago, a distance of 2,614 miles, has a rate of $3.93 per cwt. ($3.01 per ton mile), whereas from Waterways to Chicago, a distance of 1,971 miles—actually 643 miles closer than Prince Rupert —rate is $5 per cwt. ($5.07 per ton mile), or $1.07 per cwt. more.

"(*b*) Prince Rupert to Toronto, a distance of 2,954 miles, has a rate of $4.28 per cwt. ($2.90 per ton mile), whereas from Waterways to Toronto,

a distance of 2,311 miles—actually 643 miles closer than Prince Rupert—rate is $4.75 per cwt. ($4.13 per ton mile), or 15 cents per cwt. more.

"(c) From Prince Rupert to New York, a distance of 3,523 miles, the rate is $4.28 per cwt., whereas from Cheecham to New York, a distance of only 2,842 miles, the rate is actually $5.40 per cwt., or $1.12 per cwt. more."

In other words, the alleged discrimination is based entirely on a mileage comparison. Such a measure of the rates has little probative value, because they are not built up on a mileage basis. These rate differences are not something of comparatively recent origin; the differences have existed for a great many years and we have had occasion to consider and review them in previous cases.

Judgment dated October 12, 1914, Volume 4, Board's Judgments and Orders, page 293, dealt with complaint made by the W. J. Guest Fish Company, Limited, of Winnipeg, with regard to carload express rate on fish from Vancouver to Winnipeg, in which comparison was made of rate of $2.50 per 100 pounds from Vancouver to Winnipeg with $3 from Vancouver to Boston, Montreal and Toronto, and it was contended that the lesser mileage to Winnipeg warranted a much lower rate. The Board found that the rate from the Pacific coast was compelled by competition and circumstances entirely dissimilar to those existing with respect to the rate to Winnipeg; that the $3 rate had not been built up on any mileage basis. It was held that the Vancouver-Winnipeg rate, by itself, was not unreasonable. The complaint was dismissed.

In 1916 there was established the same carload express rate on fish from Edmonton to Chicago as from Prince Rupert, except that the latter applied upon the net weight of the fish while the rate from Edmonton was subject to the classification basis, namely, the net weight plus 25 per cent for ice. This was the subject of a complaint by Mr. R. L. Shimmon; the rate was suspended by Order No. 25254 of August 11, 1916, and the complaint heard at Edmonton in 1917. Subsequently, under direction of the Board, the complainant and the companies were written to as follows:—

"The conditions and competitive features in connection with salt-water fish in the Pacific coast are well known. The rates were fixed from Seattle and other United States coast points and were afterwards applied from Vancouver and later from Prince Rupert strictly on account of competitive conditions.

"There is not the same element of competition at Edmonton or other interior points from which fresh water fish are shipped.

"At present, therefore, Edmonton is the only interior point in western Canada having rates based on net weight and, such being the case, it is evident that discrimination exists in connection with shipments from that point.

"In view of the facts above set out the Board is of the opinion that it would be proper to rescind its Order No. 25254 of August 11, 1916, and to permit the publication of rates from Edmonton on the basis of the Official Classification, and an order will forthwith issue accordingly."

By Judgment dated May 15, 1923, Volume 13, Board's Judgments and Orders, page 50, the Board dealt with application of the Alberta Fish Company, Limited, Edmonton, for the same express rates from fish shipping points north of Edmonton to Chicago as published from British Columbia points. It is therein stated:—

"The rates from the Pacific Coast were established many years ago, the principal port of shipment being Seattle, Wash. The fish were carried upon freight trains and upon passenger trains and as a result of the competition between the railways and the express companies a very low rate was established, viz., $2.75 per 100 pounds to Chicago, and a blanket rate of $3 to points east as far as New York."

* * * * * *

"On the construction of the Canadian Pacific Railway the Dominion Express in order to secure a share of this long-haul business established the same rates from Vancouver and large quantities of fish moved via that port. Later on (October 10, 1914) on the completion of the Grand Trunk Pacific to Prince Rupert, the Canadian Express Company considered it in their interest to attract shipments via that port and established the rate then in effect from Seattle and Vancouver."

* * * * * *

"On February 25, 1922, the present application was made which is identical with that of R. L. Shimmon, disposed of as shown above, except that at present through rates are published from the fishing stations north of Edmonton.

"At the hearing of the present complaint in Edmonton, September 11, 1922, the question of discrimination was raised, also the market competition at Chicago and the unreasonableness of the rates in themselves.

"The Board in the Shimmon case decided there was not undue discrimination owing to the admitted competition on the Pacific coast. Mr. Campbell claimed that the fish from Lesser Slave Lake came into competition with that from the coast, but the fish from Prince Rupert consists of halibut and salmon, while from points north of Edmonton whitefish are shipped. This latter fish, I am informed, commands a high price in the American markets, and in my opinion the real market competition would be with whitefish received from other points and these are largely shipped from the lakes in Manitoba."

* * * * * *

"The point of production is however not at Edmonton but at points north thereof from which through rates have been published. The reasonableness of these through rates must therefore be determined."

* * * * * *

"As already pointed out, the application is based on a rate applying from Vancouver and Prince Rupert which is controlled entirely by competitive conditions. The Board has held in numerous cases that it is in the discretion of the carriers whether they shall or shall not make rates to meet competition; further, that a compelled rate based on competition is not the measure by which the reasonableness of other rates is established, where similar competitive conditions do not exist."

By Order No. 33692, dated May 25, 1923, the Board directed that the following rates be published on fish, in carloads, minimum weight 20,000 pounds on classification weight basis, to Chicago:—

From	Rate in cents per 100 lbs.
Caslan, Alberta	415
Lac la Biche, Alberta	
Assineau, Alberta	435
Driftpile, Alberta	
Faust, Alberta	
Indiana, Alberta	
Kinuso, Alberta	
Sawridge, Alberta	
Wagner, Alberta	
Widewater, Alberta	

Applicant refers to United States fishermen landing fish on the Pacific coast and shipping it through Canada to the United States in bond, thus avoiding duty, whereas the fresh water fish from Alberta pay duty imposed by the United States government. The fact that fish caught in American waters, passing through Canada in bond, is allowed free entry into the United States is not a matter over which the transportation companies have any control and

cannot be taken into consideration with respect to the rates charged for transportation. The salt water fish from the Pacific coast consist of halibut and salmon, while, from the fresh water lakes of Alberta, whitefish are shipped. We have no knowledge concerning the actual competition between them, nor has applicant furnished any data with respect thereto.

Applicant alludes to low price levels and states rates were increased as prices advanced, but have not been subjected to revision downward as prices have receded. Applicant furnished no data whatever concerning prices, merely making a very general statement. Similar statements have been made in numerous cases before the Board, especially during the past few years, and what is stated in Section 1 of our Judgment dated May 3, 1935, in the applications of the Saanich Fruit Growers' Association and the British Columbia Coast Growers' Association for a reduction in the express rates on berries, carloads, from Victoria and British Columbia mainland points, is here relevant. Changes in rates have been based on the cost of operation to which the carriers are subjected. They are not based on fluctuations in the prices of commodities.

Applicant suggests, without furnishing any details, that operating costs have materially decreased. With the diminished volume of traffic, there has been no appreciable reduction in the cost of operation, which is amply borne out by the express statistics for 1933 (the last year available) issued by the Dominion Bureau of Statistics, showing net operating revenue in that year of only $6,014.83 for the Canadian National Express and $94,162.20 for the Canadian Pacific Express Company, and these figures are exclusive of taxes, amounting to $54,312.87 in the case of the Canadian National Express and $79,085.08 in the case of the Canadian Pacific Express Company. We have not the figures for the United States express company participating in the carriage of this traffic to Chicago and New York.

Effective in 1933 to United States destinations and in 1934 to Canadian destinations, between the points here in question, the billing basis for fresh fish, carloads, was changed from classification weight (that is net weight plus 25 per cent) to net weight, which represented a reduction of 20 per cent in the express charges and it is contended by the express companies that this was a most substantial concession made as a measure of assistance to the shippers. Applicant alleges that:—

> "Such concession has not served to better the situation a great deal.
>
> "Before this adjustment was made, cars had been billed that contained a minimum of 16,000 pounds at classification weight basis, and it is now necessary for shippers to load their cars up to 20,000 pounds net in order to derive any benefit from the newer rate. This works a hardship on the shippers because it is frequently difficult to secure the weight in sufficient time to make shipment before the product commences to deteriorate. Furthermore, a great many points of destination cannot use more than 16,000 pounds weekly, and, in such cases, the shipper is forced to pay a higher minimum, which means he is still paying the old rate."

Applicant's statement that it is necessary to load 20,000 pounds net weight in a car instead of 16,000 pounds, as formerly, in order to derive any benefit by the lower charge is incorrect, because, as a result of the changed billing basis, there is a reduction in the charges on any weight of fish loaded in excess of 16,000 pounds net. The express companies further state their records show that the majority of cars have been loaded to 20,000 pounds net or over.

Applicant makes reference to the express rates from Halifax to Montreal and Toronto, but the situation is that none of this fish traffic moving in carloads between the points named is being handled under these express rates; it is all moving in freight service.

It will be noted that to Chicago the rates found by the Board to be reasonable by the Judgment of May 15, 1923, have since been subject to the reduction created by the change in billing weight basis already referred to. The per car mile earnings produced by these rates cannot be considered unreasonable. It must be borne in mind that there is practically a one hundred per cent long empty haul of express refrigerator cars into these shipping points, which is a very important factor in determining the cost of transporting this fish traffic. Upon what is before us, we would not be justified in directing any reduction in these rates.

From Edmonton to New York, Toronto and Montreal, the per car mile earnings under the present rates are considerably lower than from Edmonton to Chicago. These rates were also subjected to the same reduction by a similar change in the billing weight basis. Under such circumstances, we find no justification for directing any reduction therein.

To Chicago, however, we find that from Waterways the present rate is unreasonable to the extent that it is in excess of 75 cents over the Edmonton rate; in other words, that it should be $4.70 instead of $5; from Athabaska, Fallis and Wabamun, the difference over Edmonton should not exceed 20 cents, at present being 70 cents, 50 cents and 50 cents respectively.

To New York, Toronto and Montreal, we see no justification for the rates from shipping points beyond Edmonton exceeding the rate differences over Edmonton with respect to the rate to Chicago. There are shown below, in column "A," the present rates and, in column "B," those we are here directing based on the same rate differences as at present in effect, or herein prescribed, to Chicago.

From	To New York. Column "A"	To New York. Column "B"	To Montreal and Toronto. Column "A"	To Montreal and Toronto. Column "B"
Faust	524	492	445	415
Widewater	524	492	445	415
Lac la Biche	506	472	430	395
Conklin	540	507	450	430
Cheecham	540	507	465	430
Waterways	590	527	475	450
Athabaska	522	472		
Fallis	500	472		
Wabamun	500	472		
St. Paul	522	472		
Bonneyville	522	472		
Beaver River Crossing	532	482		

(Rates in cents per 100 pounds)

Ottawa, Ont., May 29, 1935.

ORDER No. 52003

In the matter of the application of P. G. Davis, M.P., on behalf of fishermen in Northern Alberta, for a review of the express rates on fish, in carloads, from Edmonton and points north thereof in the Province of Alberta to Chicago, Illinois; Toronto, Ontario; Montreal, Quebec; and New York, New York.

File No. 27101.38

SATURDAY, the 1st day of June, A.D. 1935.

S. J. McLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon consideration of the submissions filed in support of the application and by the Express Traffic Association of Canada,—

The Board orders: That the express rates on fish, in carloads, from the points shown below shall not exceed the following rate differences over the rates from Edmonton to said destinations:—

To	From	Cents per 100 pounds
Chicago, Ill.	Waterways, Alta.	75
	Athabaska, Alta.	20
	Fallis, Alta.	20
	Wabamun, Alta.	20
New York, N.Y.	Faust, Alta.	40
	Widewater, Alta.	40
	Lac la Biche, Alta.	20
	Conklin, Alta.	55
	Cheecham, Alta.	55
	Waterways, Alta.	75
	Athabaska, Alta. Fallis, Alta. Wabamun, Alta. St. Paul, Alta. Bonneyville, Alta.	20
	Beaver River Crossing, Alta.	30
Montreal, Que.	Faust, Alta.	40
Toronto, Ont.	Widewater, Alta.	40
	Lac la Biche, Alta.	20
	Conklin, Alta.	55
	Cheecham, Alta.	55
	Waterways, Alta.	75

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51931

In the matter of the application of the Express Traffic Association of Canada, hereinafter called the "Applicant," for permission to file on less than statutory notice a revised tariff on currency transported for the Bank of Canada.

File No. 27612.117

WEDNESDAY, the 22nd day of May, A.D. 1935.

S. J. McLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon its appearing that the proposed tariff on currency will contain technical advances, but that the general result will be a reduction, which it is desired to make effective as soon as possible; and upon the consent of the Bank of Canada, filed,—

It is ordered: That the applicant be, and it is hereby, permitted to file, upon five days' notice, a revised tariff on currency shipped by or to the Bank of Canada.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51936

In the matter of the application of H. G. Toll, Agent, Transcontinental Freight Bureau, hereinafter called the "Applicant," for permission to issue, on less than statutory notice supplements to Tariff C.R.C. No. 644, Tariff C.R.C. No. 645, Tariff C.R.C. No. 653, and Tariff C.R.C. No. 655, covering increases in rates and minimum weights on grain, grain products, and seeds, carloads, (1) from points in the United States to points in Canada; (2) from points in Canada to points in the United States; and (3) also between points in the United States via routes operating through Canada.

File No. 27612.116

WEDNESDAY, the 22nd day of May, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant be, and he is hereby, granted leave to issue, upon fifteen days' notice, supplements to the following tariffs, namely:—

Tariff C.R.C. No. 644, covering rates on barley, corn and products from the United States to British Columbia;

Tariff C.R.C. No. 653, covering rates from points in British Columbia to the United States and Great Northern Railway points in Western Canada;

Tariff C.R.C. No. 645, covering rates on grass seeds from United States points to Vancouver, for export; and

Tariff C.R.C. No. 655, Territorial Directory,

showing increases in such rates and minimum weights on grain, grain products, and seeds, carloads.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51948

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

THURSDAY, the 23rd day of May, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

The Board orders: That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3 namely:—

Supplement 18 to Tariff C.R.C. No. E-1233.
Supplement 99 to Tariff C.R.C. No. E-1235.
Supplement 30 to Tariff C.R.C. No. E-1238.
Supplement 25 to Tariff C.R.C. No. E-1239.
Supplement 23 to Tariff C.R.C. No. E-1241.
Supplement 54 to Tariff C.R.C. No. E-1244.
Supplement 55 to Tariff C.R.C. No. E-1244.
Supplement 5 to Tariff C.R.C. No. E-1543.
Supplement 13 to Tariff C.R.C. No. E-1745.
Supplement 14 to Tariff C.R.C. No. E-1745.
Supplement 41 to Tariff C.R.C. No. E-1804.
Supplement 42 to Tariff C.R.C. No. E-1804.
Supplement 26 to Tariff C.R.C. No. E-1829.
Supplement 18 to Tariff C.R.C. No. E-1911.
Supplement 17 to Tariff C.R.C. No. E-1974.
Supplement 17 to Tariff C.R.C. No. E-2070.
Supplement 3 to Tariff C.R.C. No. E-2248.
Tariff C.R.C. No. E-2261.
Supplement 1 to Tariff C.R.C. No. E-2261.
Supplement 2 to Tariff C.R.C. No. E-2261.
Tariff C.R.C. No. E-2264.
Tariff C.R.C. No. E-2265.
Tariff C.R.C. No. E-2281.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51949

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 23rd day of May, A.D. 1935.

S. J. McLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in items 274 and 372½, also the carload mileage rates under Scales K and M of Supplement No. 68 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 68 to Tariff C.R.C. No. E-4312, approved herein, are as follows, namely:—

	Cents per 100 pounds
Item 274—	
To Quebec, P.Q.	26
Item 372½—	
To Abercorn, P.Q.	19½
Berthierville, P.Q.	20
Cap de la Madeleine, P.Q.	20
Drummondville, P.Q.	20
Farnham, P.Q.	19½
Grandes Piles, P.Q.	19
Grand'Mere, P.Q.	20
Levis, P.Q.	21½
Malvina, P.Q.	20
Mansonville, P.Q.	19½
Montreal, P.Q.	19½
Quebec, P.Q.	21½
St. Gabriel, P.Q.	20
St. Guillaume, P.Q.	19½
St. Johns, P.Q.	19½
Ste. Rosalie, P.Q.	19½
Stanbridge, P.Q.	19½
Trois Rivieres, P.Q.	20
Waterloo, P.Q.	19½

To Windsor Mills, P.Q.	Cents per 100 pounds 20	
	Scale K	Scale M
Not exceeding 5 miles	3	3
Over 5 to 10 miles	3½	3½
Over 10 to 15 miles	4	4
Over 15 to 20 miles	5	4
Over 20 to 25 miles	6½	5
Over 25 to 30 miles	7	5
Over 30 to 35 miles	7	5
Over 35 to 40 miles	7½	5
Over 40 to 45 miles	7½	5
Over 45 to 50 miles	9	5
Over 50 to 55 miles	9	6½
Over 55 to 60 miles	9	6½
Over 60 to 65 miles	9	6½
Over 65 to 70 miles	10½	6½
Over 70 to 75 miles	10½	6½
Over 75 to 85 miles	11½	7½
Over 85 to 95 miles	12	7½
Over 95 to 100 miles	12	7½
Over 100 to 125 miles	12½	9
Over 125 to 130 miles	12½	10
Over 130 to 150 miles	14	10
Over 150 to 170 miles	14½	10
Over 170 to 180 miles	15½	10
Over 180 to 190 miles	15½	10
Over 190 to 200 miles	16½	10
Over 200 to 220 miles	16½	12½
Over 220 to 230 miles	17	12½
Over 230 to 240 miles	17	12½
Over 240 to 250 miles	17	12½
Over 250 to 270 miles	17½	14
Over 270 to 280 miles	17½	14
Over 280 to 290 miles	19	14
Over 290 to 300 miles	19	14

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51950

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 23rd day of May, A.D. 1935.

S. J. McLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item 210 of Supplement No. 27 to Tariff C.R.C. No. E-4322, filed by the Canadian Pacific Railway Company under section 9 of

the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 27 to Tariff C.R.C. No. E-4322, approved herein, is 33 cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51951

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 23rd day of May, A.D. 1935.

S. J. McLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in item 265 of Supplement No. 28 to Tariff C.R.C. No. E-4322, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 28 to Tariff C.R.C. No. E-4322, approved herein, are as follows:—

From	Cents per 100 pounds
Fredericton, N.B.	6½
Quisibis, N.B.	12

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51952

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 23rd day of May, A.D. 1935.

S. J. McLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item 18 of Supplement No. 8 to Tariff C.R.C. No. E-4369, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 8 to Tariff C.R.C. No. E-4369, approved herein, is 79½ cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51953

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 23rd day of May, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in item 570-D of Supplement No. 40 to Tariff C.R.C. No. E-4686, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 40 to Tariff C.R.C. No. E-4686, approved herein, are as follows:—

To	Cents per 100 pounds
Belleville, Ont.	33
Brockville, Ont.	34½
Hamilton, Ont.	34
Kingston, Ont.	34
Leamington, Ont.	39
Montreal, P.Q.	29
Oshawa, Ont.	33
Port Colborne, Ont.	34½
St. Catharines, Ont.	34½
Sarnia, Ont.	41½
Thorold, Ont.	34½
Toronto, Ont.	33
Welland, Ont.	34½
Windsor, Ont.	41½

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51954

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 23rd day of May, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in items 640 and to Fredericton, N.B., in item 675-A of Supplement No. 1 to Tariff C.R.C. No. E-4742, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 1 to Tariff C.R.C. No. E-4742, approved herein, are as follows:—

	Cents per 100 pounds
Item 640	5
Item 675-A—	
To Fredericton, N.B.	14½

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51955

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 23rd day of May, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item 475 of Supplement No. 3 to Tariff C.R.C. No. E-4742, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 3 to Tariff C.R.C. No. E-4742, approved herein, is 31½ cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51959

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

MONDAY, the 27th day of May, A.D. 1935.

F. N. GARGEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in items 80, 90, 145, 150, 425, 480, 485, 490, 570, 645, 675, 690, 2720, 2725, and 2730 of Tariff C.R.C. No. E-4742, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the Said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. E-4742, approved herein, are as follows:—

	Cents per 100 pounds	
Item 80	18	
Item 90	20	
Item 145	22½	
		Any
Item 150—	Carloads	Quantity
To Saint John, N.B.	16½	22½
To West Saint John, N.B.	14	14
Item 425	12½	
	Local	Furtherance
Item 480	62½	44½
Item 485	32½	
Item 490	14½	
Item 570—		
To Belleville, Ont.	33	
Brockville, Ont.	34½	
Hamilton, Ont.	34	
Kingston, Ont.	34	
Leamington, Ont.	39	
Montreal, Que.	29	
Oshawa, Ont.	33	
Port Colborne, Ont.	34½	
St. Catharines, Ont.	34½	
Sarnia, Ont.	41½	
Thorold, Ont.	34½	
Toronto, Ont.	33	
Welland, Ont.	34½	
Windsor, Ont.	41½	

	Carloads	Any Quantity
Item 645	15	20
Item 675—		
To Edmundston, N.B.	33	
Fredericton, N.B.	18	
Riviere du Loup, Que.	31½	
St. Stephen, N.B.	15	
Woodstock, N.B.	25	
Item 690	18	

Items 2720, 2725, and 2730—	From Saint John, N.B. A	B	C	D
To				
Belleville, Ont.	..	39	34	31½
Brantford, Ont.	..	35	..	..
Brockville, Ont.	39	..	33	31
Chatham, Ont.	..	..	42	..
Chesterville, Ont.	40	..	..	..
Cornwall, Ont.	39	..	33	31
Drummondville, Que.	39½	..	..	..
Fort William, Ont.	..	..	37	35
Grand Mere, Que.	39½	..	..	..
Guelph, Ont.	..	34½	..	..
Hamilton, Ont.	..	..	33	31
Kingston, Ont.	..	..	32½	30½
Kitchener, Ont.	..	35	..	..
Levis, Que.	..	..	31½	27½
Lindsay, Ont.	..	36	..	..
Listowel, Ont.	..	45½	..	..
London, Ont.	..	..	36½	34½
Magog, Que.	37½	..	..	..
Montreal, Que.	..	..	30½	25
Niagara Falls, Ont.	..	35½	33	..
Orillia, Ont.	..	36½	..	..
Oshawa, Ont.	..	..	33½	31
Ottawa, Ont.	..	..	37½	35½
Owen Sound, Ont.	..	38½	36½	..
Parry Sound, Ont.	..	49	..	..
Pembroke, Ont.	42½	..	..	..
Perth, Ont.	42½	..	..	..
Peterboro, Ont.	..	35½	..	..
Port Arthur, Ont.	..	..	37	35
Quebec, Que.	..	..	30½	27
St. Catharines, Ont.	..	35½	33	..
Sarnia, Ont.	..	..	36½	34
Sault Ste. Marie, Ont.	38½	..	36	34
Shawinigan Falls, Que.	39½	..	..	..
Sherbrooke, Que.	38½	..	..	..
Simcoe, Ont.	..	38	..	33½
Smiths Falls, Ont.	41	..	..	..
Thetford Mines, Que.	44½	..	..	..
Thorold, Ont.	..	..	33	31
Toronto, Ont.	..	..	33½	31
Trois Rivieres, Que.	..	..	31	26
Tweed, Ont.	..	44	..	..
West Fort William, Ont.	..	..	37	35
Windsor, Ont.	..	..	36½	34

A—Minimum 30,000 pounds.

B—Minimum 40,000 pounds.

C—Minimum 60,000 pounds.

D—Minimum 80,000 pounds.

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 51960

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

No. 34822.2

MONDAY, the 27th day of May, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the joint tolls published to Prince of Wales, N.B., Bristol, N.B., and Andover, N.B., in Supplement No. 5 to Tariff C.R.C. No. E-1543, filed by the Canadian National Railways under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Canadian Pacific Railway Company's proportion to be reported as follows:—

To Prince of Wales, N.B.	6c. per 100 pounds
Bristol, N.B.	8c. per 100 pounds
Andover, N.B.	8c. per 100 pounds

2. And the Board hereby certifies that the Canadian Pacific Railway Company's proportion of the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 5 to Tariff C.R.C. No. E-1543, approved herein, are as follows:—

To	Cents per 100 pounds
Prince of Wales, N.B.	7½
Bristol, N.B.	10
Andover, N.B.	10

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 51961

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 27th day of May, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in item 54-B of Supplement No. 42 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to be reported as follows:—

To	Cents per 100 pounds
Paradise, N.S.	6.8
Windsor, N.S.	8.8
Kingsport, N.S.	8.8
Weston, N.S.	8.8

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal tolls for the purpose of reimbursement under

subsection 3 of section 9 of the said Act, on traffic carried under the said item 54-B of Supplement No. 42 to Tariff C.R.C. No. 812, approved herein, are as follows:—

To	Cents per 100 pounds
Paradise, N.S.	8.5
Windsor, N.S. Kingsport, N.S. Weston, N.S.	10.3

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 51962

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 27th day of May, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 56 of Supplement No. 43 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to be reported at 6·6 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item 56 of Supplement No. 43 to Tariff C.R.C. No. 812, approved herein, is 8·1 cents per 100 pounds.

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 51966

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for approval of their Automobile Contract Ticket for the carriage of automobiles in mixed train service in British Columbia, on file with the Board under file 38460.

MONDAY, the 27th day of May, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon its appearing that the applicants are prepared to carry automobiles in mixed train service between Prince Rupert, Terrace, and Hazelton, British Columbia, at reduced rates upon the execution of a release limiting liability, and that the conditions of such release are reasonable,—

It is ordered: That the applicant's form of Automobile Contract Ticket for the carriage of automobiles in mixed train service between Prince Rupert, Terrace, and Hazelton, in the province of British Columbia, attached hereto marked "A," be, and it is hereby, approved.

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 51968

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 27th day of May, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in item 47 of Supplement No. 44 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to be reported as follows:—

To	Cents per 100 pounds
Paradise, N.S.	18.8
Lawrencetown, N.S.	18.8
Middleton, N.S.	19.0
Berwick, N.S.	19.0
Kentville, N.S.	26.2
Wolfville, N.S.	27.4
Kingsport, N.S.	28.1

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item 47 of Supplement No. 44 to Tariff C.R.C. No. 812, approved herein, are as follows:—

To	Cents per 100 pounds
Paradise, N.S.	21.2
Lawrencetown, N.S.	21.2
Middleton, N.S.	23.8
Berwick, N.S.	23.8
Kentville, N.S.	31.7
Wolfville, N.S.	34.3
Kingsport, N.S.	33.7

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 51973

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 27th day of May, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in items 90 to 120, inclusive, 125, 130, 155, 156, 160-A, 165, 166-A, 170-A, 175-A, and 180 of Supplement No. 8 to Tariff C.R.C. No. 866, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 8 to Tariff C.R.C. No. 866, approved herein, are as follows:—

	All rates in cents per 100 pounds Tariff	Normal
Sections 90 to 120, inclusive, 125, 155, 156, 160-A, 165, and 166-A	2½	3
	3	4
	3½	4½
	4	5
	4½	5½
	5	6½
	5½	7
	6	7½
	6½	8
	7	9
	7½	9½
	8	10
	9	11½
	9½	12
	10	12½
	10½	13
	11	14
	11½	14½
	12	15
	13	16½
	13½	17
Item 130—		
To Middleton, N.S.	..	14
Bridgetown, N.S.	..	14½
Truro, N.S.	..	9
Item 170-A—		
To Middleton, N.S.	..	11½
Bridgetown, N.S.	..	11½
Item 175-A—		
To Bridgetown, N.S.	..	7½
Yarmouth, N.S.	..	10
Item 180—		
To Truro, N.S.	..	6½

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 51974

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 27th day of May, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 956, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 956, approved herein, are as follows:—

To	Rates in cents per 100 pounds A	B	C	D
Belleville, Ont.	..	40	34½	32½
Brantford, Ont.	..	36	..	..
Brockville, Ont.	40	..	34	31½
Chatham, Ont.	..	..	43	..
Cornwall, Ont.	40	..	34	31½
Drummondville, Que.	41	..	..	..
Fort William, Ont.	..	..	38	36
Guelph, Ont.	..	35½	..	..
Grand'Mere, Que.	41	..	..	..
Hamilton, Ont.	..	..	34	32
Kingston, Ont.	..	..	33½	31
Kitchener, Ont.	..	36	..	..
Lindsay, Ont.	..	37	..	..
Listowel, Ont.	..	46½	..	..
London, Ont.	..	..	37½	35
Magog, Que.	39½	..	..	..
Montreal, Que.	..	..	32	26½
Niagara Falls, Ont.	..	36½	34	..
Orillia, Ont.	..	37½	..	..
Oshawa, Ont.	..	..	34½	32
Ottawa, Ont.	..	..	38½	36½
Owen Sound, Ont.	..	39½	37	..
Parry Sound, Ont.	..	50	..	..
Port Arthur, Ont.	..	..	38	36
Pembroke, Ont.	44	..	..	..
Perth, Ont.	46	..	..	..
Peterboro, Ont.	..	37	..	..
Quebec, Que.	..	..	30½	27
St. Catharines, Ont.	..	36½	34	..
Sarnia, Ont.	..	..	37	35
Shawinigan Falls, Que.	41	..	..	..
Sherbrooke, Que.	39½	..	..	..
Sault Ste. Marie, Ont.	60	..	36½	34½
Simcoe, Ont.	..	39	..	34½
Smith's Falls, Ont.	42½	..	..	..
Thetford Mines, Que.	47	..	..	..
Toronto, Ont.	..	..	34½	32
Trois Rivieres, Que.	..	..	32½	27½
Tweed, Ont.	..	45	..	..
West Fort William, Ont.	..	..	38	36
Windsor, Ont.	..	..	39½	35

1½ cents to be deducted account of water haul.

A—Minimum 30,000 pounds
B—Minimum 40,000 pounds
C—Minimum 60,000 pounds
D—Minimum 80,000 pounds

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 51975

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 27th day of May, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 1 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 1 to Tariff C.R.C. No. 956, approved herein, are as follows:—

To	Rates in cents per 100 pounds			
	A	B	C	D
Chesterville, Ont.	41	..	..	..
Perth, Ont.	44	..	..	..
Simcoe, Ont.	..	39	..	34½

1½ cents per 100 pounds to be deducted account of water haul.

A—Minimum 30,000 pounds
B—Minimum 40,000 pounds
C—Minimum 60,000 pounds
D—Minimum 80,000 pounds

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 51976

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 27th day of May, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 957, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act: the Dominion Atlantic Railway Company's proportion to be reported, mineral water at 10·1 and empty bottles at 12·6 per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 957, approved herein, is, on mineral water 12·6 and on empty bottles 13·7 cents per 100 pounds.

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 51977

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 27th day of May, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 958, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 958, approved herein, are as follows:—

To	Cents per 100 pounds
Guelph, Ont.	45½
Simcoe, Ont.	45

1½ cents to be deducted account of water haul.

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 51978

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 27th day of May, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 959, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to be reported at 17·1 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 959, approved herein, is 21·4 cents per 100 pounds.

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 51979

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 27th day of May, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 960, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 960, approved herein, is 35½ cents per 100 pounds, 1½ cents to be deducted account of water haul.

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 51980

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 27th day of May, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 961, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 961, approved herein, is 34 cents per 100 pounds, less 1½ cents per 100 pounds account of water haul.

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 51981

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 28th day of May, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 962, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to all stations beyond Truro, N.S., to be reported at 6·25 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of normal tolls to stations beyond Truro, N.S., for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 962, approved herein, is 7·8 cents per 100 pounds; the normal toll to Truro is 10 cents per 100 pounds:

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 51982

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 28th day of May, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 964 and Supplement No. 1 thereto, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to all stations beyond Truro, N.S., to be reported at 6·25 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal tolls to stations beyond Truro, N.S., for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 964 and Supplement No. 1 thereto, approved herein, is 7·8 cents per 100 pounds. The normal toll to Truro, N.S., is 10 cents per 100 pounds.

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 51983

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 28th day of May, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 965, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to all stations beyond Truro, N.S., to be reported at 6·25 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal tolls to stations beyond Truro, N.S., for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 965, approved herein, is 7·8 cents per 100 pounds. The normal toll to Truro, N.S., is 10 cents per 100 pounds.

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 51984

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 28th day of May, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 966, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 966, approved herein, is 34 cents per 100 pounds; 1½ cents per 100 pounds to be deducted account of water haul.

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 51985

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

TUESDAY, the 28th day of May, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 733, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 733, approved herein, are as follows:—

From	Cents per 100 pounds
Edmundston, N.B.	39
Ste. Rose, Que.	32½
Notre Dame du Lac, Que.	29
Cabano, Que.	26½
St. Louis du Ha Ha, Que.	25
St. Honore, Que.	22½

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 51986

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.17

TUESDAY, the 28th day of May, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 39, filed by the Cumberland Railway and Coal Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 39, approved herein, is 6½ cents per 100 pounds.

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 51990

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 30th day of May, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item 96 of Supplement No. 5 to Tariff C.R.C. No. 907, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 5 to Tariff C.R.C. No. 907, approved herein, is 5½ cents per 100 pounds.

S. J. MCLEAN,
Assistant Chief Commissioner.

ORDER No. 51991

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 30th day of May, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in item 225 and to St. Hyacinthe, P.Q., in item 170-C of Supplement No. 6 to Tariff C.R.C. No. E-4645, filed by the Canadian

Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 6 to Tariff C.R.C. No. E-4645, approved herein, are as follows:—

	Cents per 100 pounds
Item 225	2½
Item 170-C	
To St. Hyacinthe, Que.	27½

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51992

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 30th day of May, A.D. 1935.

S. J. McLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in items 94, 2720-B, 2725-B, and 2730-C of Supplement 4 to Tariff C.R.C. No. E-4742, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 4 to Tariff C.R.C. No. E-4742, approved herein, are as follows:—

	Cents per 100 pounds	
Item 94—		
Saint John, N.B., to Montreal, P.Q.	41½	
Items 2720-B, 2725-B and 2730-C—	A	B
Saint John, N.B. to		
Garthby, P.Q.	..	35½
Listowel, Ont.	..	41
Megantic, P.Q.	41	..
Oshawa, Ont.	..	35
St. Thomas, Ont.	..	39½
Thetford Mines, P.Q.	..	35½

A—Minimum 30,000 pounds
B—Minimum 40,000 pounds

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51993

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

No. 34822.12

THURSDAY, the 30th day of May, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published from Saint John, N.B., to Sarnia and Windsor, Ont., minimum 40,000 pounds, in item 2730-D of Supplement No. 5 to Tariff C.R.C. No. E-4742, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 5 to Tariff C.R.C. No. E-4742, approved herein, are, to Sarnia, Ont., and Windsor, Ont., 43 cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51994

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

No. 34822.13

THURSDAY, the 30th day of May, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item 244 of Supplement No. 18 to Tariff C.R.C. No. 906, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 18 to Tariff C.R.C. No. 906, approved herein, is $5\frac{1}{2}$ cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51995

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 30th day of May, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in Supplement No. 1 to Tariff C.R.C. No. 965, filed by the Dominion Atlantic Railway Company under section 9 of the Mari-

time Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to be reported at 6·25 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 1 to Tariff C.R.C. No. 965, approved herein, is 7·8 cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51996

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 30th day of May, A.D. 1935.

S. J. McLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 2 to Tariff C.R.C. No. 965, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to all points to be reported at 6·25 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 2 to Tariff C.R.C. No. 965, approved herein, is 7·8 cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 51997

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.15

THURSDAY, the 30th day of May, A.D. 1935.

S. J. McLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published to Chipman, N.B., and East Angus, P.Q., in Supplement No. 2 to Tariff C.R.C. No. 194, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 2 to Tariff C.R.C. No. 194, approved herein, are as follows:—

To	Cents per ton of 2,000 pounds
Chipman, N.B.	40
East Angus, P.Q.	260

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52002

In the matter of the application of the Detroit and Windsor Subway Company and the Detroit and Canada Tunnel Company, hereinafter called the "Applicant Companies," for approval of Supplement No. 4 to Tariff C.R.C. No. 18, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5.

SATURDAY, the 1st day of June, A.D. 1935.

S. J. McLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the applicant companies' said Supplement No. 4 to Tariff C.R.C. No. 18, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5, be, and it is hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MARCH, 1935

Railway accidents	171,	with 14 persons killed and	174 injured.
Railway accidents at highway crossings	10,	with 10 persons killed and	10 injured.
	181,	24	184

	Killed	Injured
Passengers	1	30
Employees	4	130
Others	19	24
	24	184

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents	
	NEW BRUNSWICK
1	Pedestrian—Passed under lowered gates.
	QUEBEC
1	Automobile—Driver failed to stop for crossing. Licence, Que. 51688.
	ONTARIO
4	Automobile—Ran into side of train. Ont. licences, P-7773, C.T.-961, X-1053, CE-345.
2	Automobile—Auto driver failed to see or hear train. Ont. licences, FM-284, C-3853.
1	Auto Truck—Ran into side of train. Ont. licence, 20350-C.
	MANITOBA
1	Automobile—Driver lost bearings in snowstorm. Licence, Man. 987.

Of the ten accidents at highway crossings, five occurred at protected crossings and five at unprotected crossings. Six of the accidents occurred during the daylight hours and four at night.

OTTAWA, May 23, 1935.

SUMMARIES OF ORDERS ISSUED BY THE BOARD OF RAILWAY COMMISSIONERS

51898 May 3—Approving Supp. 3 to agreement between Bell Telephone Co. and Yarmouth Rural Telephone Co., Ltd.

51899 May 3—Declaring C.N. Rys. crossing of Mount Edward Road, mileage 3·15, Kensington Subd'n, P.E.I., protected to Board's satisfaction.

51900 May 6—Authorizing Ont. Hydro-Elec. Power Comm. to erect power wires across C.N. Rys. on private property in Tp. Secord, Dist. of Sudbury, Ont., 1½ miles west of McVitties Station.

51901 May 8—Authorizing C.P.R. and C.N. Rys. to publish on one day's notice a supplement to C.P. Tariff C.R.C. No. E-4746 and C.N. Tariff C.R.C. No. E-2274, to correct certain errors.

51902 May 8—Authorizing Dominion Atlantic Ry. to publish on one day's notice a reissue of Tariff C.R.C. No. 964 to correct the rate to Avondale, N.S.

51903 May 8—Declaring C.N. Rys. crossing of Cumane street, Truro, N.S., protected to Board's satisfaction.

51904 May 8—Refusing application of C.P.R., to remove its agent at Kelloe, Man.

51905 May 8—Approving agreement between Bell Telephone Co. and Parkhill-Arkona Telephones, Ltd.

51906 May 8—Approving Buffalo & Fort Erie Public Bridge Authority's Tariff C.R.C. No. A-4 covering tolls to be charged for use of the Peace Bridge between Fort Erie and Buffalo.

51907 May 8—Declaring C.N. Rys. crossing, first north of Howick, P.Q., protected to Board's satisfaction so long as present speed limitation of 10 miles an hour is in effect.

51908 May 8—Requiring C.N. Rys. forthwith to appoint and maintain a station agent at Stornoway, Sask.

51909 May 8—Extending until July 31, 1936, time within which semi-automatic interlocking plant may be installed at crossing of Algoma Central & Hudson Bay Ry. over C.N.R., at mileage 80·54, Port Arthur to Sudbury Branch, Dist. of Sudbury, Ont.

51910 May 9—Directing C.N. Rys. forthwith to restore train service between Tweed and Bannockburn, Ont.

51911 May 9—Authorizing C.N. Rys. to publish on one day's notice a supplement to Tariff C.R.C. No. E-2036 to correct an error.

51912 May 9—Authorizing C.P.R. to operate interlocking plant at crossing of Kettle Valley Ry. and C.N.P.R. at Hope, B.C.

51913 May 8—Declaring C.N. Rys. crossing, second north of King Station, Ont., protected to Board's satisfaction.

51914 May 9—Declaring Pere Marquette Ry. crossing of Division street, Kingsville, Ont., satisfactorily protected so long as present speed limitation of 10 miles an hour is in effect.

51915 May 9—Directing C.P.R. to construct standard station platform at Fosston, Sask., to set down alongside present station another building 10 by 20 feet, to take care of perishable shipments of freight and express.

51916 May 9—Authorizing New York Central and N. St. C. & T. Rys. to use and operate signal system installed at crossing at Erie avenue, near north limit of Queen street, Niagara Falls, Ont.

51917 May 9—Authorizing Rural Mun. of Old Kildonan, Man., to construct a highway crossing over C.P.R. Bergen Cut-Off at MacGregor street, Old Kildonan, Man.

51918 May 11—Approving certain revised schedules of tolls of the Bell Telephone Co.

51919 May 7—Approving Supp. 1 to agreement between Bell Telephone Co. and St. Lawrence Corporation, Limited.

51920 May 11—Approving location and details of C.N. Rys. station erected at Grande Cascapedia, P.Q.

51921 May 13—Declaring C.N. Rys. crossing ¾ mile north of Cannington, Ont., protected to Board's satisfaction.

51922 May 13—Authorizing Quebec Dept. of Roads to construct highway crossing over New York Central Ry. on Montreal-Malone highway, about 1·3 miles southwest of Huntingdon, P.Q.

51923 May 13—Authorizing Rural Mun. of Tisdale No. 427, Sask., to construct a highway crossing over C.N. Rys. on road allowance between Secs. 2 and 3-45-14 W2M., Sask.

51924 May 14—Approving revised location of Nipissing Central Ry. in Tp. of LeBel, Dist. Temiskaming, P.Q.

51925 May 18—Rescinding Order 49076, Sept. 29, 1932, providing for a speed limitation of 20 miles an hour in the operation of trains over C.N. Rys. diverted line between mileage 41·55 and 46·0, Alexandria Subd'n, in vicinity of St. Louis, P.Q.

51926 May 18—Approving proposed location of C.N. Rys. freight and passenger shelter at Brainerd, Man.

51927 May 18—Declaring C.N. Rys. crossing of Main street, Galt, Ont., protected satisfactorily so long as all southbound train movements are flagged over crossing and speed limitation of 6 miles an hour maintained.

51928 May 20—Declaring C.P.R. crossing immediately west of Locust Hill Stn., Ont., protected to Board's satisfaction.

51929 May 20—Declaring C.N. Rys. crossing, first west of Delia Station, Alta., protected to Board's satisfaction.

51930 May 20—Authorizing C.P.R. to remove its agent at Pearl, Ont. (caretaker to be appointed).

51931 May 22—Authorizing Express Traffic Ass'n of Canada to file upon five days' notice a revised tariff on currency shipped by or to the Bank of Canada.

51932 May 20—Authorizing C.N. Rys. to reconstruct bridge over creek at mileage 56·6, Skeena Subd'n, B.C.

51933 May 20—Authorizing C.N. Rys. to reconstruct bridge over creek at mileage 84·8, Skeena Subd'n, B.C.

51934 May 13—Approving the abandonment of operation of that portion of C.N. Rys. Hagersville Subd'n, between Jarvis and Port Dover, Ont.

51935 May 22—Declaring C.P.R. crossing of Ontario street west of Cobourg Station (third), Ont., protected to Board's satisfaction.

51936 May 22—Authorizing H. G. Toll, Agent, Transcontinental Freight Bureau, to file upon fifteen days' notice supplements to certain tariffs covering increases on grain and grain products from United States to Canada, from Canada to United States, and between points in United States via routes operating through Canada.

51937 May 22—Declaring C.N. Rys. crossing of Dennison Road, Weston, Ont., protected to Board's satisfaction.

51938 May 22—Authorizing C.N. Rys. to reconstruct bridge over Bulkley river, at mileage 62·2, Telkwa Subd'n, B.C.

51939 May 22—Authorizing C.N. Rys. to reconstruct bridge over creek at mileage 13, Skeena Subd'n, B.C.

51940 May 22—Refusing application of Farmers of Langtry, Alta., and vicinity, for an Order directing Northern Alberta Rys. to construct a siding at Langtry.

51941 May 23—Authorizing C.N. Rys. to reconstruct bridge over creek at mileage 87·7, Skeena Subd'n, B.C.

51942 May 23—Authorizing C.P.R. to construct spur along Water street across part of Princess street, to premises of St. Croix Soap Mfg. Co., Ltd., at St. Stephen, N.B.

51943 May 22—Refusing application of residents of Culp, Alta., and district, for an Order directing that the Northern Alberta Rys. siding and station at Culp be moved to a point 1½ miles east.

51944 May 23—Declaring the C.N. Rys. crossing of Devine street, Sarnia, Ont., satisfactorily protected so long as speed limitation of 10 miles an hour is in effect.

51945 May 23—Authorizing C.N. Rys. to reconstruct bridge over Bulkley river, mileage 60·8, Telkwa Subd'n, B.C.

51946 May 23—Authorizing C.P.R. to reconstruct bridge No. 33·4, Suffield Subd'n, near Armelgra, Alta.

51947 May 23—Directing C.N. Rys. to build a slope on land of W. J. Boland at Bloor street west, Toronto, and application for appointment of an arbitrator is refused.

51948 May 23—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tariffs filed by C.N. Rys. under sec. 3.

51949 May 23—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in items 274 and 372½, also carload mileage rates under Scales K and M. of Supp. 68 to Tariff C.R.C. No. E-4312, filed by C.P.R. under sec. 9.

51950 May 23—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, toll published in item 210 of Supp. 27 to Tariff C.R.C. No. E-4322, filed by C.P.R. under sec. 9.

51951 May 23—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in item 265 of Supp. 28 to Tariff C.R.C. No. E-4322, filed by C.P.R. under sec. 9.

51952 May 23—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, toll published in item 18 of Supp. 8 to Tariff C.R.C. No. E-4369 filed by C.P.R. under sec. 9.

51953 May 23—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in item 570-D of Supp. 40 to Tariff C.R.C. No. E-4686 filed by C.P.R. under sec. 9.

51954 May 23—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in item 640 and to Fredericton, N.B., in item 675-A of Supp. 1 to Tariff C.R.C. No. E-4742, filed by C.P.R. under sec. 9.

51955 May 23—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, toll published in item 475 of Supp. 3 to Tariff C.R.C. No. E-4742 filed by C.P.R. under sec. 9.

51956 May 25—Declaring C.N. Rys. crossing of Wilmot street, Kitchener, Ont., protected to Board's satisfaction so long as present speed limitation of 10 miles an hour is in effect.

51957 May 25—Requiring C.N. Rys. to ballast track between Post 10 and Tracadie station, mile post 11·5, P.E.I.; to tie plate the three curves between station 565 and station 587; to erect slow-boards at mile post 10 and mile post 11·5; and to maintain a speed limitation of 20 miles an hour for all trains between said points, until such time as work herein required has been carried out.

51958 May 20—Refusing application of Saanich Fruit Growers' Ass'n and B.C. Coast Growers' Ass'n for a reduction in express rates on berries, carloads, from Victoria and B.C. mainland to points in prairie provinces and Eastern Canada.

51959 May 27—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in items 80, 90, 145, 150, 425, 480, 485, 490, 570, 645, 690, 2720, 2725 and 2730 of Tariff C.R.C. No. E-4742 filed by C.P.R. under sec. 9.

51960 May 27—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, joint tolls published to Prince of Wales, N.B., Bristol, N.B., and Andover, N.B., in Supp. 5 to Tariff C.R.C. No. E-543 filed by C.N. Rys. under sec. 3.

51961

51962 May 27—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in item 54-B of Supp. 42, and item 56 of Supp. 43 to Tariff C.R.C. No. 812, filed by Dominion Atlantic Ry. under sec. 9.

51963 May 27—Authorizing C.N. Rys. to reconstruct bridge over creek at mileage 80·0, Skeena Subd'n, B.C.

51964 May 27—Authorizing C.P.R. to remove agent at Mowbray, Man. (caretaker to be appointed.)

51965 May 27—Directing C.P.R. to appoint a caretaker forthwith at Meath Park Station, Sask.

51966 May 27—Approving C.N. Rys. form of Automobile Contract Ticket for carriage of automobiles in mixed train service between Prince Rupert, Terrace, and Hazelton, B.C.

51967 May 27—Authorizing C.P.R. to construct proposed extension to branch line to serve Summit Lime Works, at mileage 99·41, Crows Nest Subd'n, Alta.

51968 May 27—Approving under Maritime Freight Rates Act, sec., 3, sub-sec. 3, tolls published in item 47 of Supp. 44 to Tariff C.R.C. No. 812 filed by Dominion Atlantic Ry. under sec. 9.

51969 May 28—Authorizing C.P.R. to construct spur to serve Canadian Sugar Factories, Ltd., at Picture Butte, Alta.

51970 May 28—Authorizing C.N. Rys. to reconstruct bridge at mileage 98·8, Ashcroft Subd'n, B.C.

51971 May 27—Directing C.N. Rys. to employ day and night watchmen at crossing of Hurontario street, Port Credit, Ont., also that crossing be protected by manually-operated wigwags with bells, operated from watchmen's shanty.

51972 May 28—Authorizing Alberta Dep't Public Works to construct highway crossing over C.N. Rys. in SW¼ of sec. 18-52-23 W5M., Alta.

51973 to 51984, incl., May 27—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in certain tariffs and supplements filed by Dominion Atlanitc Ry. under sec. 9.

51985 May 28—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in Tariff C.R.C. No. 733 filed by Temiscouata Ry, under sec. 9.

51986 May 28—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, toll published in Tariff C.R.C. No. 39 filed by Cumberland Ry. & Coal Co., under sec. 9.

51987 May 28—Amending Order 46500, April 8, 1931, approving clearances on platform of T.H. & B. Ry's station at Hamilton, Ont., so as to permit railway to operate all trains over passenger tracks at company's platform, until June 15, 1936.

51988 May 29—Directing C.N. Rys. to appoint and maintain a station agent at Yellow Creek, Sask., on or before Sept. 1, 1935.

51989 May 30—Authorizing Alberta Dep't Public Works to construct a highway crossing over the C.P.R. opposite Gap Siding in SE ¼ of sec. 24-24-10 W5M., Alta.

51990 May 30—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, toll published in item 96 of Supp. 5 to Tariff C.R.C. No. 907 filed by Dominion Atlantic Ry. under sec. 9.

51991, 51992, 51993, May 30—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, certain tolls published in tariffs and supplements filed by C.P.R. under sec. 9.

51994, 51995, 51996, May 30—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in certain tariffs and supplements filed by Dominion Atlantic Ry. under sec. 9.

51997 May 30—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published to Chipman, N.B., and East Angus, P.Q., in Supp. 2 to Tariff C.R.C. No. 194 filed by Fredericton & Grand Lake Coal & Ry., under sec. 9.

51998 May 31—Authorizing Windsor, Essex & Lake Shore Rapid Ry., during dismantling and removal of its line and equipment, to cross Pere Marquette Ry. at Pelton, on Lansdowne ave., Kingsville, and immediately east of the town of Kingsville, by laying rails over the Pere Marquette, to be removed after each movement of cars over the intersection; to construct a siding to connect with the siding of the Pere Marquette on north side of main line of Pere Marquette Ry.; the Pere Marquette to appoint two experienced flagmen at each of the crossings at the expense of the Windsor, Essex & Lake Shore Rapid Ry.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXV | Ottawa, July 1, 1935 | No. 8

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Application of the Canadian National Railways for an Order granting leave to abandon the operation of that portion of its Deseronto Subdivision, in the Province of Ontario, between Trenton (M. 35·5) and Brighton (M. 45·4) a distance of 9·9 miles.

File 39310·15

JUDGMENT

McLean, *Assistant Chief Commissioner:*

Application was made by the Canadian National Railways under section 165 (*a*) of the Railway Act, subsection 3 of the Canadian National and Canadian Pacific Act, 1933, and all other appropriate statutory provisions, for an order granting it leave to abandon the operation of a portion of the Deseronto Subdivision, in the province of Ontario, between Trenton (M. 35·5) and Brighton (M. 45·4)—a distance of 9·9 miles. The line passes through well settled farming territory, the apple industry being quite highly developed. A good paved highway open all the year round parallels this line, over which regular bus services are operated and many trucking operations are reliably conducted. Railway revenues have suffered severely from truck competition. The mileage in question extends from Trenton to Brighton. There are no intermediate stations on this line between these points. It was further stated that the line was used as a matter of convenience for the handling of freight, and that at no point is this line more than two miles distant from the Oshawa Subdivision. There has been no train service operated over the line in question, and no maintenance done since 1932.

So far as the application standing by itself is concerned, there is no opposition. The Brighton Township Board of Trade has signified its satisfaction at having the Canadian National Railway track between Trenton and Brighton abandoned. Subject to the status of the contract later referred to, the Town of Trenton is not opposed to the application. The Township of Brighton was represented by Messrs. Deneys and Tompkins. Mr. Deneys for the township stated that the farmers felt that as weeds had grown up they are a menace to the farms in the locality, and wondered if the tracks were to be taken up and whether the land could be turned back to the farms again, or else have somebody cut the

weeds. Reference was made to the fact that from Brighton down through the township the railway is close to the highways, and empty cars are being stored which furnished a refuge for tramps. Counsel for the Canadian National stated that the policy of the railway was wherever possible to give the right-of-way back to the abutting owners of the land. He also undertook to look after the question of the cars being moved from the present location.

Under the agreement the railway agreed to establish a main line divisional point in the town of Trenton, and maintain and operate roundhouse and machine shop. The company was to employ in or about the divisional point premises at least one hundred men. Provision was made for some land being purchased. The town agreed to close certain streets in order to give additional yard room. The town to pay the railway $14,000 on completion of roundhouse and machine shop and commencement of operation thereof. There was to be exemption of municipal taxes and assessments, other than school taxes, for a period of ten years beginning with the assessment for the year 1912, and for the next ten years taxation at the annual value of $50,000. It was set out that should the railway at any time within the terms of twenty years mentioned in the agreement fail to maintain a divisional point at Trenton, and should remove or close its said shop or works, the railway shall return to the town the said sum of $14,000, and forfeit thereafter its said exemption from taxation.

In support of its position in regard to the status of the agreement, the town of Trenton relies upon section 35 of the Railway Act. Prior to the amending legislation of 1908 contained in section 8, chapter 61, 7-8 Edward VII, the Board had no jurisdiction in regard to the enforcement of agreements. Legislation aforesaid was repealed and replaced by section 1, chapter 32, 8-9 Edward VII. In view of the fact that jurisdiction so conferred was an invasion of a field hitherto occupied by the courts, the exact words of the section are worthy of the most careful consideration. "It will be noted that the subject-matter of the section contemplates the doing by a party to the agreement of something concerned primarily with the physical construction or reconstruction and maintenance" of the railway. (City of Victoria and Attorney-General for British Columbia v. Esquimalt and Nanaimo Railway Company, 24 C.R.C. 84, pp. 93-94. Application of the Municipal Corporation of the Town of Leamington, Ontario, for an order directing the Windsor, Essex and Lake Shore Rapid Railway Company to provide and construct a pavement on part of Erie street, Leamington, Ontario.) (13 J. & O. of the Board, p. 213.)

Consideration of the character of an agreement which the Board has power to deal with under section 35 makes it clear that the section does not apply to the agreement between the town and the railway. The obligation of the agreement does not relate to service. It is apparent that an agreement as covered by section 35 must have to do with railways in operation or those intended to be operated in connection with or as part of the railway. No ruling, therefore, can be made upon the application of the town in regard to the status of the agreement, and order may go approving the abandonment of the tracks. This, however, is entirely without prejudice to whatever rights or remedies may be open to the town in the courts.

June 1, 1935.

Concurred in by Commissioners Norris and Stoneman.

ORDER No. 52012

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 165A of the Railway Act, for approval of the abandonment of operation of a portion of the Deseronto Subdivision between Trenton, mileage 35·5, and Brighton, mileage 45·4, a distance of 9·9 miles, in the Province of Ontario.

File No. 39310.15

FRIDAY, the 7th day of June, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Trenton, May 20, 1935, in the presence of counsel for the applicants and the town of Trenton and a representative of the township of Brighton, and what was alleged,—

It is ordered: That the abandonment of operation of the said portion of the applicants' Deseronto Subdivision between Trenton, mileage 35·5, and Brighton, mileage 45·4, a distance of 9·9 miles, in the province of Ontario, be, and it is hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

Application of the Canadian National Railways for an Order of the Board granting leave to abandon the operation of that portion of its Tweed Subdivision, in the Province of Ontario, between Tweed (Mileage 33·9) and Bannockburn (Mileage 53·4), a distance of 19·5 miles.

File 39310.18

Heard at Tweed, Ont., May 27, 1935.

JUDGMENT

COMMISSIONER NORRIS:

Application was made by the Canadian National Railways, under section 165 (*a*) of the Railway Act, subsection 3 of the Canadian National-Canadian Pacific Act, 1933, and all other appropriate statutory provisions, for an order of the Board granting it leave to abandon the operation of that portion of its Tweed Subdivision, in the province of Ontario, between Tweed (M. 33·9) and Bannockburn (M. 53·4), a distance of 19·5 miles.

The promotion of this line of railway was first undertaken on behalf of the Rathbun lumber interests, with headquarters at Deseronto, Ont., and it was built under the original charter of the Napanee, Tamworth and Quebec Railway Company. It was opened for traffic in 1903. The original company (the Napanee, Tamworth and Quebec Railway Company) had been changed in 1890 to the Kingston, Napanee and Western Railway Company, and in 1896 had been merged with the Bay of Quinte Railway and Navigation Company to form the Bay of Quinte Railway Company. The Bay of Quinte Railway Company passed into the possession of the Canadian Northern Railway Company in 1914, the control of which passed to the Dominion Government in 1917. The Canadian Northern Railway Company is now operated as part of the Canadian National Railways.

The Canadian National Railways filed this application for abandonment with the Board on January 18, 1935, supporting its application with statements setting forth a general description of the line concerned, its special industrial relationships, its revenue and expenses for the year October, 1930, to September, 1931, for the calendar year 1933, and an analysis of the freight traffic on this line for the same periods.

Later, at the Board's request, the railway company also filed a statement of the revenues and expenditures for the calendar year 1934.

On February 5, 1935, the Board's Assistant Chief Engineer, accompanied by one of the Board's Inspectors, made a survey of this portion of the Canadian National Railways' line, and at an informal meeting at Tweed, Ont., conferred with representatives of the various municipalities concerned and residents of the district tributary to the railway line. These officers reported that the line was, generally, in very poor condition and would require at least 75 per cent tie renewals this season (if operation were to be continued), the rails being 70-pound laid in 1903 when the line was opened for traffic. They further reported that the residents of Tweed, Actinolite, Queensboro, and Allans (the last three villages being between Tweed and Bannockburn, in the territory served by the railway line) were strongly opposed to its abandonment.

Later, strong protests against the abandonment of this line were filed with the Board by various interested individuals, and a petition signed by some sixty residents (described as farmers, lumbermen, cheese shippers, drovers, general merchants and millmen) was received by the Board on May 23, asking that the trains now operating from Coe Hill be routed through to Yarker, Napanee or Kingston, or failing this arrangement, that trains now operating from Tweed to Napanee be routed through to Bannockburn in such a way that a connection might be made at Bannockburn with trains operating both north and south.

The Dominion Postal authorities made no objection to the proposed abandonment of this line of railway, it having been found that such abandonment would have no adverse effect on the postal service afforded that area.

The application was heard at Tweed, Ont., on Monday, May 27, 1935; Mr. James Moore (reeve of the township of Elzevir), Mr. W. H. Sayers (reeve of the village of Tweed), Dr. P. J. Bowlby (president of the Tweed Board of Trade), Mr. F. Reynolds (livestock shipper), Mr. H. P. Purdy (flour mill owner), Mr. Oscar Taylor (farmer), Mr. F. B. Irwin (storekeeper), and Mr. Rollins (pulpwood owner), appeared before the Board in opposition to the railway company's application for permission to abandon this portion of its line.

The railway company, in support of its application, filed statements showing operating results for the year October, 1930, to September, 1931; for the calendar year 1933 and for the calendar year 1934. In his analyses of these statements, counsel for the railway company submitted that for the year October, 1930, to September, 1931 (inclusive), there was an operating system deficit of $14,924 (approximately $15,000); this calculated on a tri-weekly train service (return), from October 1, 1930, to June 23, 1931, and a semi-weekly train service (return), for the period June 23, 1931, to September 30, 1931. For the year 1933, the statements showed an operating loss of $12,800, based on a train service of one train per week (return). For the year 1934, based on a train service of one train per week (return), there was an operating system loss of approximately $7,000; a total operating system loss for the three years of approximately $34,800, or an average loss of $11,600 per year.

It was further submitted in evidence by the railway company that this portion of the line is in very bad condition; that it has been impossible since the early part of April of this year to continue the train service, on account of the unsafe condition of the track; that to place this line in condition for safe operation, would require the outlay of at least $7,500, this representing the cost

of 8,000 ties, new switch ties, repairs to culverts and labour in addition to the regular forces. To this would require to be added thereafter the cost of yearly maintenance, calculated at approximately $500 per year per mile. The statement of revenue passengers on this Tweed-Bannockburn line for the year May, 1934, to April, 1935, showed a total of 163 passengers handled on 102 train trips, an average of less than 2 passengers per trip. Counsel for the railway company contended that this statement of revenue passengers clearly indicated that no inconvenience would be inflicted upon the travelling public by the abandonment of this line of railway.

The representatives of the various municipalities and interests concerned, appearing at the hearing in opposition to the proposed abandonment of this line of railway, made no submissions as to the actual financial losses which they would suffer if the application were granted. They were at one in the opinion that the decrease in freight and passenger traffic was largely due to the lack of train service. The farmers and stock shippers stated that the one-train-a-week service was not sufficient and that the train did not run at the proper time in the week to enable them to connect with their available market. It was stated that shippers and passengers now drove to Eldorado, to avail themselves of the tri-weekly train service; and that when the railway company discontinued its tri-weekly train service and later cut the service to one train per week, the trucks secured the business, thus further decreasing the company's revenue. It was submitted that should the line be abandoned cheese shipments would require to be trucked to Belleville, and wood shipments to Bannockburn, the latter over poor roads, almost impassable at certain seasons of the year.

It was contended that the figures shown in the railway company's statements were for the leanest years in the period of low earnings, and did not properly represent the freight that would move by rail if proper train service were afforded; and that too large a proportion of main line operating expense was being charged to this feeder line of railway.

They protested that the railway line which it is proposed to abandon serves a good farming and live stock country; that there is a considerable mining industry (to be now developed) and large areas of pulpwood in the district, both of which would, with proper train service, be moved by railway; that the district lying north of Bannockburn should properly be served by this line, instead of routing its traffic via Trenton, and it was further contended that if the traffic from north of Bannockburn, destined for points east on the main line, or for points between Yarker and Tweed, must move via Trenton, Belleville, and Napanee, the freight rate would be prohibitive.

No estimate was offered, however, as to the possible amount of such freight likely to move, if the Tweed-Bannockburn line were kept in operation.

There is no doubt that some inconvenience would be imposed upon those residents of the district and business interests that have continued to use the freight and passenger service on this line of railway, and the reluctance of the residents of the communities tributary to the line, to lose it after thirty years, is readily understood.

The amendment to the Railway Act (Chapter 47; 23-24 George V) which became effective May 23, 1933, as section 165A, provides that,

> "The company may abandon the operation of any line of railway, with the approval of the Board, and no company shall abandon the operation of any line of railway without such approval."

The Railway Act lays down no principle upon which the Board should act in granting or withholding approval in such applications for abandonment of railway lines. The mere fact that a branch line of railway has ceased to show a profit from operation does not, in every case, justify its abandonment. The

issue is clearly, however, whether the loss and inconvenience to the public consequent upon the abandonment outweigh the burden that continued operation of the railway line involved would impose upon the railway company.

In this case the statement of revenue passenger traffic indicates that no considerable inconvenience will be imposed upon the travelling public if this line of railway were abandoned. The deficits in revenue from freight traffic have been heavy for some years and it was not shown at the hearing that there could be any substantial increase in this traffic. Further, it is noted that should this line be kept in operation heavy expenditure will be necessary to restore it to a safe operating condition, with the consequent yearly maintenance charges.

From the evidence presented at the hearing, it is clear that while there might, in the future, be some additional freight revenue from the carriage of the products of the mine or the pulpwood of the district, there is not sufficient traffic, present or prospective, as would warrant the continuance of the Tweed-Bannockburn line at the operating deficit shown in the company's statements, or as would justify the Board in requiring the railway company to restore these tracks to proper operating condition and provide for their yearly maintenance.

In view of the foregoing, I am of opinion that the application of the Canadian National Railways for permission to abandon that portion of its line between Tweed and Bannockburn should be granted.

OTTAWA, June 18, 1935.

Concurred in by the Assistant Chief Commissioner and Commissioner Stone.

ORDER No. 52032

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 165A of the Railway Act, Section 2, Subsection 3, of the Canadian National-Canadian Pacific Act, 1933, and all other appropriate statutory provisions, for an Order granting them leave to abandon the operation of a portion of the Tweed Subdivision, betweeen Tweed and Bannockburn, Ontario.

File No. 39310.18

THURSDAY, the 20th day of June, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Tweed, May 27, 1935, in the presence of counsel for the applicants and representatives of the village of Tweed and the township of Elzevir, and what was alleged,—

It is ordered: That the abandonment of operation of that portion of the applicants' Tweed Subdivision between Tweed, mileage 33·9, and Bannockburn, mileage 53·4, a distance of 19·5 miles, be, and it is hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52006

In the matter of the application of the Manitoba Northern Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic that portion of its Flin Flon Branch, in the Province of Manitoba, between mileage 87·0 and 87·4, a distance of 0·4 of a mile.

File No. 36337.1

WEDNESDAY, the 5th day of June, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of the Division Engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

It is ordered: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Flin Flon Branch, in the Province of Manitoba, between mileage 87·0 and 87·4, a distance of 0·4 of a mile.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52028

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and Order No. 51976, dated May 27, 1935, approving tolls published in Tariff C.R.C. No. 957, filed by the Dominion Atlantic Railway Company.

File No. 34822.13

THURSDAY, the 20th day of June, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon its appearing that the Dominon Atlantic Railway Company's proportion of the billed toll shown in the said order was incorrect,—

The Board orders: That the figures "12·6" in the last line of paragraph 1 of the said Order No. 51976, dated May 27, 1935, be struck out and the figures "11" substituted therefor.

S. J. McLEAN,
Assistant Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR APRIL, 1935

Railway accidents	143, with	17 persons killed and	136 injured.
Railway accidents at highway crossings	13, with	6 persons killed and	14 injured.
	156	23	150

	Killed	Injured
Passengers	1	25
Employees	6	94
Others	16	31
	23	150

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents	
	Quebec
1	Auto Truck—Driver failed to stop for crossing. Licence Que. 2848 (1934).
	Ontario
3	Automobile—Ran into side of train. Ont licences HB-109, L-7974; Mich. licence X-15335.
3	Automobile—Driver failed to see or hear train. Ont. licences T-6694, C-4179, M-0135.
1	Automobile—Driver disregarded wigwag signal. Licence, Ont. M-5105.
1	Automobile—Stalled on crossing. Ont. licence CH-978.
1	Auto Truck—Excessive speed of truck. Ont. licence 47054-C.
	Manitoba
1	Horse-drawn Vehicle—Driver's hearing defective.
	Alberta
1	Horse-drawn Vehicle.
	British Columbia
1	Automobile—Auto ran into side of train. B.C. licence 10-791.

Of the thirteen accidents at highway crossings, two occurred at protected crossings and eleven at unprotected crossings. Nine of the accidents occurred during the daylight hours and four at night.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXV Ottawa, July 15, 1935 No. 9

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Application of the Canadian National Railways for an Order granting leave to abandon the operation of that portion of its Harrisburg Subdivision in the Province of Ontario, between Brant County Siding (M. 6·9) and Paris Junction (M. 12·9)—a distance of 6·0 miles.

File No. 39310.21

JUDGMENT

McLean, Assistant Chief Commissioner:

An application was made under section 165 (*a*) of the Railway Act, section 2, subsection 3, of the Canadian National-Canadian Pacific Act, 1933, and all other appropriate statutory provisions, for an Order granting leave to abandon the operation of the following line of railway, namely:—

A portion of the Harrisburg Subdivision in the province of Ontario, between Brant County Siding (M. 6·9) and Paris Junction (M. 12·9)—a distance of 6·0 miles.

The line in question was opened for operation in 1853. It was built under the Charter of The Great Western Railroad Company. The name of the company was changed to the Great Western Railway Company in 1853, which was amalgamated with the Grand Trunk Railway Company of Canada in 1882, which also amalgamated with the Canadian National Railway Company in 1923. There has been no train service operated over and no maintenance done on the line since March 3, 1932. The territory involved is well served by the main highways on which there is heavy bus and truck traffic.

No exception was taken to the granting of the application. The only discussion which took place related to the question of what would be the condition of the highway crossings and bridges if the application were granted.

Counsel for the railway pointed out at the hearing that there were a number of bridges and one subway, as well as private farm overhead crossings, but suggested these would be dealt with satisfactorily between the railway and the various interests. His instruction was that in all cases the railway is junior. He admitted this placed an obligation upon the railway to maintain the road in some way, either by removing the bridges and establishing the road at the original grade, or adopting some other measure which would satisfy the municipal authorities.

A letter from Mr. F. Smoke, M.P., dated April 1, 1935, was read into the evidence. Reference was made by Mr. Smoke to the submission made by one of his clients that the bridge over the Grand river, if it could be retained and turned over to the municipal authorities, could be utilized very well indeed by the residents on the two sides of the river as a highway, and it would, if allowed to be used as a highway, be a very great convenience as there is no road over the river between Paris and Glenmorris.

Mr. German, Reeve of South Dumfries Township, stated that his municipality had no objection to the abandonment of the line, but it was felt that as a matter of safety of the travelling public, that these bridges should be dealt with when the line was abandoned.

Counsel for the railway stated that the representatives of his company were prepared to meet at any time with the municipal representatives in an attempt to adjust between the railway and the municipality the questions arising out of the bridges, crossings and subway left after the lifting of the tracks. He stated at p. 589 of the evidence:—" I would not have any objection to this, that if we do not deal fairly, as the Township or the Town thinks, we ought to deal. they might make representations to the Board, and, although I would not admit jurisdiction to deal with it ' Amicus Curiae ' we would hesitate before we would adopt an attitude which would not commend itself to the Board's judgment."

I am of opinion that order should go granting the application. I am not satisfied the Board has jurisdiction to make adjustments in regard to bridges and highway crossings a condition of the order. At the same time, I would suggest that in the event of lack of agreement between the railway and the municipalities in respect of the highway crossings and bridges concerned, the Board might hear representations made so that through the exercise of its good offices an adjustment might be arrived at.

June 21, 1935.

Concurred in by the Deputy Chief Commissioner and Commissioner Norris.

ORDER No. 52052

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 165A of the Railway Act, for approval of the abandonment of operation of a portion of the Harrisburg Subdivision, between Brant County Siding, mileage 6·9, and Paris Junction, mileage 12·9, a distance of 6·0 miles.

File No. 39310.21

THURSDAY, the 27th day of June, A.D. 1935.

S. J. McLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Paris, May 9, 1935, in the presence of counsel for the applicants and the town of Paris, and what was alleged, no objection to the abandonment having been taken, upon the understanding that the question of the adjustment of questions arising out of the bridge crossings and subway left after the lifting of the tracks would be the subject matter of negotiation and settlement between the parties, and that, in the event of their failure to agree, further representations on the

point may be made to the Board; and upon the report and recommendation of the Division Engineer and Inspector of Railroad Operation of the Board, concurred in by its Chief Engineer and its Chief Operating Officer,—

It is ordered: That the abandonment of operation of that portion of the applicants' Harrisburg Subdivision, in the province of Ontario, between Brant County Siding, mileage 6·9, and Paris Junction, mileage 12·9, a distance of 6·0 miles, be, and it is hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

Application of D. A. Davidson, St. Laurent, Man., for an order directing the Canadian National Railways to put in effect reduced fares from Winnipeg to Laurentia Beach, and return.

File No. 30969.17

JUDGMENT BY THE BOARD, DATED MARCH 1, 1935, REPORTED IN VOLUME XXV, No. 1, APRIL 1, 1935, AT PAGE 41

ERRATA

The statement of Mr. Owens, as quoted on page 42, is correct and the judgment is in error in stating there was a day and evening rate in effect during 1918 to both Grand Beach and St. Laurent. To correct judgment make the following changes:—

Cancel, on page 42, from the words beginning "at page 2729, Mr. Owens stated" to the words, on page 43, ending "to reach Winnipeg in time for business."

Substitute the following:—

"55-trip tickets were in effect between Winnipeg and St. Laurent until the season of 1920, and, thereafter, a 50-trip ticket, in accordance with the Board's Order No. 29512, dated April 1, 1920, and the latter continued up to and including the season of 1925.

"It is also noted that the 50-trip ticket, while continued in the tariff up to and including 1925, would have been practically useless, as the daily train service would not have enabled passengers to reach Winnipeg in time for business."

The following words, at the end of paragraph 2, page 44, reading: "When, as before stated, the fares were also applicable to St. Laurent," should be deleted.

OTTAWA, ONT., June 26, 1935.

ORDER No. 52037

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 22nd day of June, A.D. 1935.

S. J. McLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in item 27 of Supplement No. 37 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 37 to Tariff C.R.C. No. 851, approved herein, are as follows:—

	Cents per 100 pounds
Carloads, minimum 24,000 lbs.	22
Lots of 5 tons or over	27½
Lots under 5 tons	32

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52038

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 22nd day of June, A.D. 1935.

S. J. McLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in items 73 and 172 of Supplement No. 87 to Traiff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 87 to Tariff C.R.C. No. 856, approved herein, are as follows:—

	Cents per 100 pounds
Item 73	24
Item 172	27½

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52039

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 24th day of June, A.D. 1935.

S. J. McLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 3 to Tariff C.R.C. No. 915, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 3 to Tariff C.R.C. No. 915, approved herein, is 18 cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52040

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 24th day of June, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 2 to Tariff C.R.C. No. 956, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 2 to Tariff C.R.C. No. 956, approved herein, are as follows:—

To	Cents per 100 pounds A	B
Garthby, P.Q.	..	37
Listowel, Ont.	..	42
Megantic, P.Q.	41½	..
Oshawa, Ont.	..	36
St. Thomas, Ont.	..	40½
Thetford Mines, P.Q.	..	38

1½ cents per 100 pounds to be deducted account of water haul.
"A"—minimum 30,000 lbs.
"B"—minimum 40,000 lbs.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52041

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 24th day of June, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 968, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 968, approved herein, are as follows:—

From	Cents per 100 pounds
Halifax, N.S.	43½
Yarmouth, N.S.	45

1½ cents per 100 pounds to be deducted account of water haul.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52042

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 24th day of June, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 969, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 969, approved herein, are as follows:—

To	Cents per 100 pounds Lake and rail	All rail
Sault Ste. Marie, Ont.	....	54½
Port Arthur, Ont. Fort William, Ont. West Fort William, Ont.	....	54

1½ cents per 100 pounds to be deducted account of water haul.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52043

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 27th day of June, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 970, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff No. 970, approved herein, are as follows:—

From	Cents per 100 pounds
Halifax, N.S.	34
Yarmouth, N.S.	36½

1½ cents per 100 pounds to be deducted account of water haul.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52044

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

THURSDAY, the 27th day of June, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 734, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 734, approved herein, are as follows:—

Miles	Cents per 100 pounds
10	5
20	6½
30	7½
40	8
65	9

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52057

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 4th day of July, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in items 2205 and 2734 of Supplement No. 8 to Tariff C.R.C. No. E-4742, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 8 to Tariff C.R.C. No. E-4742, approved herein, are as follows, namely:—

	Cents per 100 pounds	
Item 2205		Lots 10,000
To	Any quantity	pounds or more
Chipman, N.B.	27½	24
Minto, N.B.	30	
Newcastle Bridge, N.B.	30	
Item 2734	27½	

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 52058

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 4th day of July, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published from Aylesford, N.S., in item 101-B of Supplement No. 19 to Tariff C.R.C. No. 906, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 19 to Tariff C.R.C. No. 906, approved herein, is 13 cents per 100 pounds.

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 52059

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 4th day of July, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 11 of Supplement No. 6 to Tariff C.R.C. No. 864, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 6 to Tariff C.R.C. No. 864, approved herein, is 19½ cents per 100 pounds.

F. NAP. GARCEAU,
Deputy Chief Commissioner.

GENERAL ORDER No. 539

In the matter of rules covering the preparation of accounts to apply to joint projects undertaken under order of the Board.

File No. 11026.74

TUESDAY, the 18th day of June, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

Upon reading the submissions filed in this matter; and upon the report and recommendation of the Division Engineer of the Board, concurred in by its Chief Engineer,—

It is Ordered: That the rules covering preparation of accounts and rates of rental of railway-owned equipment to apply to joint projects undertaken under order of the Board by railway companies within the legislative authority of the Dominion of Canada, be, and they are hereby, approved and adopted, namely:—

"A Joint Project shall be considered to mean an elimination project, grade crossing protection, drainage or other such work directed by order of the Board and to which the Board contributes.

"The preparation of accounts shall be in general as herein provided, or as may be determined from time to time by the Board.

"*Labour.*—To all items of labour, including wages of foremen, add 10 per cent for supervision, accounting, etc., and the use of tools. A direct charge shall be allowed for engineering services when it is necessary for their employment continuously and exclusively on the particular work, plus the 10 per cent labour allowance.

"Under this item it will be proper to charge the wages of Office Engineers and Draughtsmen assigned to the work in the preparation of plans after the issue of the Board's order, plus the usual 10 per cent. "Assigned" means continuous service for one day or more solely in connection with the particular project, but does not permit accumulation of short intermittent periods to equal one day.

"The 10 per cent allowance added to the cost of labour is in lieu of the cost of all salary and expense of any general or supervising officer or other person regularly employed having supervision over any railway operation or maintenance, including all overhead office expense, cost of draughting-room accessories, etc., all stenographic or clerical forces employed in head, divisional, or district office, handling matters pertaining to the work, all charges for minor equipment and small tools.

"*Transportation of Men.*—No transportation charges for railway labour or employees will be allowed, except extraordinary transportation which may be considered by the Board in each special case.

"*Material.*—To the invoice price (including foreign freight, customs duty, sales tax and exchange) of all items of materials and supplies used, add 15 per cent to cover supervision, store expense, inspection, accounting, handling, and transportation over the billing carrier's line to point of use. When material hauled over billing carrier's line is in excess of 250 miles, a further allowance of 10 mills per net ton mile for such excess mileage shall be included in addition to the 15 per cent allowance. Proper credit shall be allowed for salvage materials, less 15 per cent to cover expense of supervision, inspection, store expense, accounting, handling, and transportation.

"*Contract Work.*—To the contract price of work done by an outside contractor there may be added a premium to cover supervision, accounting, and inspection of 3 per cent on contracts up to $50,000, of 2 per cent on contracts between $50,000 and $100,000, and of 1 per cent on contracts over $100,000.

"*Land Purchases and Damages.*—To the purchase price of land and property damages, registration fees, special taxes, fees paid into court, and commissions paid for purchase settlement there may be added a premium to cover supervision, accounting, etc., of 3 per cent on amounts up to $50,000, 2 per cent on amounts between $50,000 and $100,000, and 1 per cent on amounts over $100,000. All amounts under this heading to be added together and considered as a total before the premium is added.

"*Workmen's Compensation.*—No award in payment of compensation claim for injury or death will be allowed.

"*Rental of Railway-owned Equipment.*—Rental of railway-owned equipment, when used in joint project work, shall be in accordance with Schedule 'A' Circular No. 42, of the Railway Association of Canada. No percentage allowance shall be added to equipment rental.

"Schedule 'A,' indicating description of equipment and rates per day, is attached herewith. The rates in the foregoing Schedule are for each 24-hour period, including Sundays and holidays, or fraction thereof, and do not include wages and expenses of employees in charge of equipment, supplies, fuel, or cost of transportation equipment, which shall be charged in addition to rental.

"*Work Train.*—Flat rate, including rental of one locomotive (all sizes), locomotive repairs, fuel and all supplies, engine and train or switch crew wages and supplies, all engine-house expense, and rental of a maximum of four work cars, including caboose—per hour—$15 (for special equipment rental see Schedule attached), with the addition of a work train service trackage charge of $1.50 per train mile.

"*Transportation of Equipment.*—Charges at the following rates for transportation of work equipment and cars handling miscellaneous equipment shall be made from home station or previous job to point of use, also for return movement if moved to home station or point to be stored. If moved to another job no charge shall be made for return movement.

"In revenue trains—6 cents per unit per mile, minimum $6.

"In work trains—cost of work train services provided; charges shall be made for rental of equipment while being transported.

"SCHEDULE 'A'

"RATES OF RENTAL OF RAILWAY-OWNED EQUIPMENT

Revenue Equipment	Rates per Day
CARS—	
Ballast (all types), steel or steel underframe	$1 60
Ballast (all types), wood	1 10
Box (all types) 60-ton cap	1 50
Box (all types) 50-ton cap	1 40
Box (all types) 40-ton cap	1 30
Box (all types) 30-ton cap	1 10
Coal (all types), steel or steel underframe	1 60
Coal (all types), wood	1 40
Flat (all types)	1 00
Refrigerator	2 40
Tank—10,000 gallons and over	1 60
less than 10,000 gallons	1 40
Caboose	1 30
Ballast trimmer	4 30
Air dump—30 cu. yds. and over	4 30
Air dump—20 to 29 cu. yds	3 60
Air dump—less than 20 cu. yds	2 60

Revenue Equipment	Rates per Day
Cars—	
Boarding and kitchen (Converted passenger)	2 90
Bunk, kitchen, dining, rail and tie, tool, cabin idler, cinder, etc. (Converted freight)	1 50
Scale test (See par. 3)	7 90
Water transport (including old tender converted)	2 40
Cranes—	
Less than 10 tons capacity	5 80
10 to 29 tons capacity	12 40
30 to 49 tons capacity	18 60
50 to 99 tons capacity	21 20
100 to 149 tons capacity	29 90
150 to 199 tons capacity	32 50
200 tons capacity	40 00
Combination crane and pile driver	21 60
Concrete mixer	4 70
Ditcher	12 10
Fire-fighting tank	7 20
Flanger and scraper	5 00
Pile drivers—	
Self-propelled	30 20
Non-self-propelled	11 50
Rail loader (air or steam operated)	3 20
Rail unloader—	
40-ton and less	8 40
41-ton to 60-ton	10 30
Snow-plough—	
Rotary	77 20
Steel or steel underframe with wings and drop points	14 70
Wood with wings and drop points	12 20
All others	5 10
Spreaders (with attachments, steel, or steel underframe with ditch line contour)	15 30
Steel or steel underframe without ditch line contour	11 20
Wood	4 70
Steam shovels—	
3 cu. yds. and over	27 30
Less than 3 cu. yds	16 80
Track layer	9 40
Well boring machine	2 10
Miscellaneous Equipment	
Auto trucks—	
(One) 1-ton capacity and under	2 70
Over 1 to 2½ tons capacity	4 20
Over 2½ tons capacity	6 30
Roadway machine—	
Air compressors	
160 cu. ft	6 20
Less than 160 cu. ft	4 20
Ballast plough—	
Centre	2 50
Side	1 70
Bonding machine	60
Boiler	1 20
Cars—	
Motor—inspection	70
Trailer	30
Trailer (dump type)	40
Concrete mixers (gasoline or steam)—	
¼ cu. yd and under	1 70
Over ¼ to ½ cu. yd	3 70
Over ½ cu. yd	5 30
Concrete placer	8 50
Cranes (gasoline or battery)	
Electric, with attachments	
Caterpillar—12-ton capacity	13 00
3,000 pounds capacity	3 50
Hand	2 30
Drag net excavator	13 00
Drill—	
Calyx—power	4 90
Gasoline drive	1 20
Ice planer	1 20
Jack (geared or ball bearing) 50 tons and over	70

Revenue Equipment	Rates per Day
MISCELLANEOUS EQUIPMENT	
Paint spraying machine	
Two-spray guns	1 50
Pile driver	5 60
Pneumatic tools (with attachments)	
Cement gun	3 00
Drill or reamer	70
Rivet or chipping hammer	60
Rock drill	90
Tie tamper	70
Pump (gasoline or steam driven)	5 00
Rail grinder	1 80
Snow loader	16 90
Stone crusher	1 80
Tie adzing machine	3 10
Track layer	6 30
Track layer (three men)	1 00
Tructractor (gasoline or battery electric)	3 00
Weeding machine (gasoline)	2 30
Welding machine (electric)	4 60

"The rates in above Schedule are for each 24-hour period (including Sundays and holidays), or fraction thereof, and do not include wages and expenses of employees in charge of equipment, supplies, fuel, or cost of transporting equipment, which shall be charged in addition to rental."

S. J. McLEAN,
Assistant Chief Commissioner,

GENERAL ORDER No. 540

In the Matter of the application of the Canadian Freight Association, on behalf of the railway companies, for rescission of that portion of General Order No. 211 dated December 10, 1917, prescribing carload minimum weights for lumber in closed cars under 35 feet in length, inside measurement:

File No. 19475.43

WEDNESDAY, the 26th day of June, A.D. 1935.

S. J. McLEAN, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon reading what is filed in support of the application, the Canadian Lumbermen's Association consenting thereto, and its appearing that closed cars of the length specified are no longer in railway service,—

The Board Orders.—That the provisions of General Order No. 211, dated December 10, 1917, in so far as they relate to carload minimum weights for lumber in closed cars under 35 feet in length, inside measurement, be, and they are hereby, rescinded.

S. J. McLEAN,
Assistant Chief Commissioner,

GENERAL ORDER No. 541

In the matter of the application of Canadian Industries Limited, of Montreal, Quebec, for an Order extending the provisions of Specification 23F, as authorized for use in General Order No. 499, dated May 20, 1932, so as to include for manufacture and use in the Dominion of Canada, a box of special construction, as particularly hereinafter described.

File No. 1717.38.2

SATURDAY, the 22nd day of June, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

Upon reading what is filed in support of the application, and the consent of the Railway Association of Canada, filed; and upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the provisions of Specification 23-F, as authorized for use by the said General Order No. 499, dated May 20, 1932, be, and they are hereby, extended to include, for manufacture and use in the Dominion of Canada, a box of special construction as follows, namely:—

Special Container.—Authorized only for gelatin dynamite in bulk, in carload lots, loaded by shipper and to be unloaded by consignee. The container must comply with all provisions of Specification 23-F, with additions and exceptions as follows:—

(*a*) The container must be one-piece type.

(*b*) The container must be lined with a liner, to reinforce four box faces not closed by flaps, and with top and botton pads. These must be made of the same material as specified for the outside container. The liner must be made with adjoining edges overlapped at least 1½ inches, stitched to form joint, and with flanges at least 1½ inches wide, formed by creasing and bending, so as to reinforce the edges of the box faces formed by the closing flaps.

(*c*) Loads in compression tests of 1,000 pounds for end to end compression and 300 pounds for top to bottom compression are acceptable.

S. J. McLEAN,
Assistant Chief Commissioner,

SUMMARIES OF ORDERS ISSUED BY THE BOARD OF RAILWAY COMMISSIONERS

51999. May 30—Approving location and details of new shelter to be erected by C. N. Rys. at Jordan Falls, N.S.

52000. May 30—Rescinding Order No. 42529, April 26, 1929, authorizing Rural Mun. of St. Andrews, Man., to divert public highway and close crossing over C.P.R.—Sec. 34-14-4 EPM., Man.

52001. May 31—Declaring C.P.R. crossing of MacTavish street, Fort William, Ont., protected to Board's satisfaction so long as present speed limitation of 10 miles an hour is in effect.

52002. June 1—Approving Detroit and Windsor Subway Co.'s Suppl. 4 to Tariff C.R.C. No. 18 covering tolls to be charged in respect of the Detroit Tunnel.

52003. June 1—Ordering certain new express rates on fish from Waterways, Alta., and other points to Chicago, New York, and Montreal.

52004. June 4—Declaring C.P.R. crossing, first west of Bruce Station, Ont., protected to Board's satisfaction.

52005. June 5—Authorizing C.P.R. to construct spur to serve A. Lallemand Refining Co., across certain streets at Laprairie, Que.

52006. June 5—Authorizing Manitoba Northern Ry. to open for traffic that portion of its Flin Flon Branch, Man., between miles 87·0 and 87·4.

52007. June 4—Authorizing C.N. Rys. to expropriate certain land of J. W. Rowland, to remove obstruction to view at crossing of Tillicum road, mileage 2·25 Cowichan Subd'n, B.C.

52008. June 7—Authorizing C.N. Rys. to cross Brunswick street and Broadway street, Melfort, Sask., with extensions to passing track.

52009. June 8—Extending until Sept. 11, 1935, time within which Dominion Atlantic Ry. may complete branch line of railway and tail spur to serve Dominion Dep't Public Works at Hantsport, N.S.

52010. June 10—Declaring C.P.R. crossing just west of Cobden Station, Ont., protected to Board's satisfaction.

52011. June 10—Directing C.P.R. forthwith to appoint a caretaker at White Fox Station, Sask.

52012. June 7—Approving the abandonment of operation of portion of C.N. Rys. Deseronto Subd'n, between Trenton and Brighton, Ont., a distance of 9·9 miles.

52013. June 12—Declaring New York Central R.R. crossing, first west of Windham, Ont., protected to Board's satisfaction.

52014. June 6—Authorizing Tp. of O'Connor, Ont., to construct highway crossing over C.N. Rys. in Lot 3, Con. 3, Tp. O'Connor, Dist. of Thunder Bay, Ont.

52015. June 10—Directing C.N. Rys. to fence their right of way opposite property of Thomas Beaulieu, parish of Ste. Flavie, Co. Rimouski, Que.

52016. June 10—Extending until July 15, 1935, time within which C.P.R. may complete installation of 3-bar railing on Interprovincial Bridge between Ottawa, Ont., and Hull, Que.

52017. June 13—Authorizing Dominion Atlantic Ry. to construct spur to serve Canadian Canners, Ltd., at Middleton, N.S.

52018. June 14—Approving By-law No. 325 of the city of Hull, Que., prohibiting the sounding of engine whistles within the limits of the city of Hull.

52019. June 10—Authorizing Ont. Hydro-Elec. Power Comm. to erect wires across C.N. Rys. on road between Lots 16 and 17, Con. A, Tp. Haldiman, Co. Northumberland, Ont.

52020. June 10—Authorizing Ont. Hydro-Elec. Power Comm. to erect wires across C.N. Rys. on road in Lot 20, between Cons. 1 and 2, Tp. Albion, Co. Peel, Ont.

52021. June 5—Approving service station contract between Bell Telephone Co. and Mattawa Electric Light and Power Co., Ltd.

52022. June 15—Authorizing Algoma Central and H.B. Ry. to reconstruct bridge over Mattwishquia river, mileage 293·11, Tp. Way, District Cochrane, Ont.

52023. June 17—Authorizing Dominion Atlantic Ry. to reconstruct bridge No. 17·92, Truro Subd'n, N.S.

52024. June 15—Authorizing Hull Electric Ry. to abandon operation of its line between Notre Dame street, Aylmer, and Queens Park, Que.

52025. June 15—Authorizing C.N. Rys. to use and operate bridge over South Thompson river, mileage 2·78, Kamloops Subd'n, B.C.

52026. June 17—Authorizing Ont. Hydro-Elec. Power Comm. to erect wires across C.N. Rys. on road allowance in Lot 17, between Cons. 6 and 7, Tp. Otonabee, Co. Peterborough, Ont.

52027. June 17—Authorizing Alberta Dep't Public Works to change location of highway crossing over C.P.R. in NW¼ Sec. 14-29-23 W4M., Alta.

52028. June 20—Amending Order 51976, May 27, 1935, by striking out figures "12·6" in last line of paragraph 1, and substituting therefor figures "11"—D.A. Ry. Tariff C.R.C. No. 957—Maritime Freight Rates.

52029. June 20—Declaring C.N. Rys. crossing one-half mile south of St. Jean Station, Man., protected to Board's satisfaction.

52030. June 21—Amending Order 51743, Feb. 16, 1935, by striking out word "southeast" in third line of paragraph 2 and substituting therefor the word "northwest" —*re* installation of wigwag signal at crossing of Renfrew street, Vancouver, B.C., by Great Northern Ry.

52031. June 20—Authorizing Ont. Dep't Northern Development to construct a highway crossing over C.N. Rys. in Lot 122, Con. "B," Tp. of Foley, Dist. Parry Sound, Ont.

52032. June 20—Authorizing abandonment of portion of C.N. Rys. line between Tweed and Bannockburn, Ont., a distance of 19·5 miles.

52033. June 22—Approving extension to C.P.R. wharf opposite Lots Nos. 549A, 550A, 551A, and 1272A, and in front of part of St. John street, to connect with its wharf on Lot No. 562A, in Victoria Harbour, Victoria, B.C.

52034. June 25—Authorizing C.N. Rys. to reconstruct apron at Ogden Point ferry slip, Victoria, B.C.

52035. June 26—Authorizing C.P.R. to use and operate bridge No. 33·4, Suffield Subd'n, near Armelgra, Alta.

52036. June 22—Declaring C.P.R. crossing of Kyle street, Port Moody, B.C., protected to Board's satisfaction.

52037. June 22—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in tariffs and supplements filed by Dominion Atlantic Ry. under sec. 9.
52038.
52039. June 24—
52040.
52041.
52042.
52043.

52044. June 27—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in Tariff C.R.C. No. 734 filed by Temiscouta Ry. under sec. 9.

52045. June 25—Directing C.N. Rys. to install wigwag signal in addition to existing electric bell at crossing of Adelaide street, Mount Brydges, Ont.

52046. June 28—Declaring C.P.R. crossing, first east of Obico, Ont., protected to Board's satisfaction.

52047. June 28—Approving and authorizing clearances at C.N. Rys. siding for River Valley Lumber Co., near Oromocto, N.B.

52048. June 29—Extending until June 25, 1936, time within which the Vancouver, Victoria and Eastern Ry. and Nav. Co. may carry out provisions of Order 51690, Jan. 25, 1935, *re* restoration of regular train service between International Boundary and Princeton, B.C.

52049. June 29—Declaring C.N. Rys. crossing at Laframboise street, St. Hyacinthe, Que., protected to Board's satisfaction so long as present speed limit of 8 miles an hour is in effect, protection by watchmen between 7 a.m. and 7 p.m., and switching movements protected by trainmen during the hours said watchmen are not on duty.

52050. June 29—Authorizing Mun. of Newport, Que., to construct two highway crossings over C.N. Rys., at grade level, one at mileage 35·23 and one at mileage 39·04, Chandler Subd'n, Que.

52051. June 29—Requiring C.N. Rys. to build a slope along property of W. J. Boland, K.C., at present abutting on Bloor street west, Toronto, Ont.

52052. June 27—Approving abandonment of operation of that portion of C.N. Rys. Harrisburg Subd'n, between Brant County Siding and Paris Junction, Ont., a distance of 6·0 miles.

52053. July 2—Approving location and details of C.N. Rys. station to be erected at Callander, Ont.

52054. July 2—Approving Supp. 4 to agreement between Bell Telephone Co. and Stroud Telephone Co., Ltd.

52055. July 2—Authorizing C.P.R. to construct spur connecting with tracks of International Nickel Co. of Canada, Ltd., at Clara Belle, Ont.

52056. July 3—Declaring C.P.R. crossing, second west of Whitewood Station, Sask., protected to Board's satisfaction.

52057. July 4—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in items 2205 and 2734 of Supp. 8 to Tariff C.R.C. No. E-4742 filed by C.P.R. under sec. 9.

52058. July 4—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published from Aylesford, N.S., in item 101-B of Supp. 19 to Tariff C.R.C. No.
52059. 906, and in item 11 of Supp. 6 to Tariff C.R.C. No. 864, filed by Dominion Atlantic Ry. under sec. 9.

52060. July 2—Directing C.P.R. to construct highway crossing over its tracks, at grade level, in Lot 21, Con. 3, Tp. of South Sherbrooke, Ont., mileage 23·60, Belleville Subd'n.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXV | Ottawa, August 1, 1935 | No. 10

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ORDER No. 52069

In the matter of the application of the Canadian Pacific Telegraph Company, hereinafter called the "Applicant Company," under Section 375 of the Railway Act, for approval of Supplement No. 12 to Tariff C.R.C. No. 27, effective July 1, 1935.

File No. 10041.9.2

WEDNESDAY, the 10th day of July, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon its appearing that the said supplement was not filed with the Board in sufficient time to give the notice required by the Railway Act, and it is desirable that the effective date be the same as that published by the telegraph companies in the United States,—

The Board orders: That the said Supplement No. 12 to the applicant company's Tariff C.R.C. No. 27 be, and it is hereby, approved as effective July 1, 1935.

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 52072

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for permission to file, on less than statutory notice, a supplement to Tariff C.R.C. No. E-1807, to correct errors.

File No. 27612.118

SATURDAY, the 13th day of July, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon its appearing that through error, and contrary to an agreement with the Canadian Pacific Railway Company, incorrect rates were published in item

828-H of Supplement No. 69 to Tariff C.R.C. No. E-1807, and it is desirable that such erroneous rates be corrected as soon as possible,—

The Board orders: That the applicants be, and they are hereby, permitted to file, upon one day's notice, a supplement to their said Tariff C.R.C. No. E-1807 to correct such errors.

J. A. STONEMAN,
Commissioner.

ORDER No. 52076

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

MONDAY, the 15th day of July, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act, namely:—

Supplement 100 to Tariff C.R.C. No. E-1235.
Supplement 101 to Tariff C.R.C. No. E-1235.
Supplement 32 to Tariff C.R.C. No. E-1238.
Supplement 24 to Tariff C.R.C. No. E-1241.
Supplement 34 to Tariff C.R.C. No. E-1247.
Supplement 19 to Tariff C.R.C. No. E-1256.
Supplement 49 to Tariff C.R.C. No. E-1284.
Supplement 24 to Tariff C.R.C. No. E-1689.
Supplement 15 to Tariff C.R.C. No. E-1745.
Supplement 43 to Tariff C.R.C. No. E-1804.
Supplement 12 to Tariff C.R.C. No. E-2047.
Supplement 13 to Tariff C.R.C. No. E-2047.
Supplement 18 to Tariff C.R.C. No. E-2070.

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 52077

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

MONDAY, the 15th day of July, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published to Bristol, N.S., in item 140A of Supplement No. 7 to Tariff C.R.C. No. E-4645, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 7 to Tariff C.R.C. No. E-4645, approved herein, is 7¼ cents per 100 pounds.

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 52078

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

MONDAY, the 15th day of July, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in item 2734A of Supplement No. 10 to Tariff C.R.C. No. E-4742, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 10 to Tariff C.R.C. No. E-4742, approved herein, are as follows:—

To	Cents per 100 pounds
Chipman, N.B.	25
Minto, N.B.	27½
Newcastle Bridge, N.B.	

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 52079

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

MONDAY, the 15th day of July, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 2099 of Supplement No. 12 to Tariff C.R.C. No. E-4742, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 12 to Tariff C.R.C. No. E-4742, approved herein, is 5 cents per 100 pounds.

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 52080

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 15th day of July, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 45 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to be reported as follows:—

To	Cents per 100 pounds
Paradise, N.S.	6.4
Windsor, N.S.	8.9
Kingsport, N.S.	8.7
Weston, N.S.	8.6

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportions of the normal rates for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 45 to Tariff C.R.C. No. 812, approved herein, are as follows:—

To	Cents per 100 pounds
Paradise, N.S.	7.6
Windsor, N.S.	10.2
Kingsport, N.S.	10.7
Weston, N.S.	10.7

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 52081

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 15th day of July, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 967, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to be reported as follows:—

Item 1	10.8 cents per 100 pounds
Item 2	18.4 cents per 100 pounds
Item 3	11.8 cents per 100 pounds

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportions of the normal tolls for the purpose of reimbursement under

subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 967, approved herein, are as follows:—

Item 1	13.6 cents per 100 pounds
Item 2	23.0 cents per 100 pounds
Item 3	14.8 cents per 100 pounds

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 52082

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 15th day of July, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the lake and rail toll published in Tariff C.R.C. No. 969, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 969, approved herein, is 48½ cents per 100 pounds; 1½ cents per 100 pounds to be deducted account of water haul.

F. NAP. GARCEAU,
Deputy Chief Commissioner.

DEC 4 1935

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXV | Ottawa, August 15, 1935 | No. 11

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ORDER No. 52102

In the matter of the application of H. G. Toll, Agent of the Transcontinental Freight Bureau, hereinafter called the "Applicant," for permission to publish and file a supplement to Tariff C.R.C. No. 646, on less than statutory notice.

File No. 27612.119

THURSDAY, the 25th day of July, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon its appearing that errors have been made in connection with minimum weights shown in items 1340A and 1340B of Supplement No. 30 and Supplement No. 31 to Tariff C.R.C. No. 646, and that it is necessary that such errors be corrected promptly,—

It is ordered: that the applicant be, and he is hereby, permitted to file, upon one day's notice, a supplement to the said Tariff C.R.C. No. 646, to correct errors in minimum weight provisions in items 1340A and 1340B.

F. NAP. GARCEAU,
Deputy Chief Commissioner.

ORDER No. 52106

In the matter of the application of the Quebec Central Railway Company, hereinafter called the "Applicant Company," under Section 342 of the Railway Act, for relief from posting certain tariffs at stations at which the population is 1,000 or less.

File No. 39362

FRIDAY, the 26th day of July, A.D. 1935.

F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered and declared:

1. That the applicant company be, and it is hereby, relieved from posting tariffs to the following extent, namely:—

(*a*) That at stations at which the population is 1,000 or less, named in Exhibit "A" attached hereto and made a part hereof, only the Canadian Freight Classification, Standard and Local Specific Class Tariffs, and such other tariffs as are frequently used be posted; and that other tariffs for use of agents at such stations be posted in the office of the General Freight Agent at Sherbrooke, in the province of Quebec;

(*b*) To discontinue the posting of tariffs, applying *to* destination stations named in Exhibit "B" attached hereto and made a part hereof, except those that are frequently used; and that other tariffs for use of agents at such stations be posted in the office of the General Freight Agent at Sherbrooke, in the province of Quebec.

2. That rates required for occasional shipments for which tariffs are not posted at the station concerned may be secured by telegraph from the General Freight Agent at Sherbrooke, in the province of Quebec.

3. That, in the event of any tariff not on file at a station being required on account of frequent movement, or if any shipper requests that a tariff be posted at a particular station, such tariff shall immediately be placed on file at that station.

4. That this order is subject to amendment or revision in the event such action appears necessary in the public interest.

F. NAP. GARCEAU,
Deputy Chief Commissioner.

Index No. Ransom's Tariff C.R.C. No. 620	Station Name	Population
25	Ayers Cliff, Que.	489
105	Bishopton, Que.	290
245	Breakeyville, Que.	500
140	Coleraine, Que.	197
315	Courcelles, Que.	198
525	Daaquam, Que.	100
255	Diamond, Que.	...
130	Garthby, Que.	450
540	Lake Frontier, Que.	119
440	Morisset, Que.	150
35	North Hatley, Que.	408
180	Robertson, Que.	671
555	St. Anselme, Que.	738
490	St. Camille, Que.	450
295	St. Ephrem, Que.	467
300	St. Evariste, Que.	654
120	St. Gerard, Que.	527
460	Ste. Germaine, Que.	175
550	Ste. Henedine, Que.	500
470	Ste. Justine, Que.	114
455	Ste. Rose, Que.	288
350	St. Samuel, Que.	54
330	St. Sebastien, Que.	47
290	St. Victor, Que.	478
230	Scotts Jct., Que.	677
215	Tring Jct., Que.	429
115	Weedon, Que.	784

EXHIBIT "B"

Index No. Ransom's Tariff C.R.C. No. 620	Station Name	Population
410	Beauceville, Que.	1,682
10	Beebe Jct., Que.	1,052
155	Black Lake, Que.	2,167
135	Disraeli, Que.	1,437
85	East Angus, Que.	3,566
200	East Broughton, Que.	1,868
190	Leeds, Que.	1,850
570	Levis, Que.	11,724
365	Megantic, Que.	3,911
260	Quebec, Que.	130,594
270	Rock Island, Que.	1,418
420	St. George, Que.	1,543
370	St. Joseph, Que.	1,625
225	Ste. Marie, Que.	1,598
55	Sherbrooke, Que.	28,933
165	Thetford Mines, Que.	10,701
220	Valley Jct., Que.	1,066

ORDER No. 52109

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

TUESDAY, the 30th day of July, A.D. 1935.

S. J. McLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. E-4756, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. E-4756, approved herein, are as follows:—

From	Cents per 100 pounds
Bonny River, N.B.	4½
Lepreaux, N.B.	3
New River, N.B.	3
Pennfield, N.B.	4
Pocologan, N.B.	4

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52110

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 30th day of July, A.D. 1935.

S. J. McLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 20 to Tariff C.R.C. No. 906, filed by the Dominion Atlantic Railway Company under section 9 of the Mari-

time Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 20 to Tariff C.R.C. No. 906, approved herein, are as follows:—

Item 70-A	Cents per 100 pounds
To	
Port Williams, N.S.	6½
Waterville, N.S.	7½
Berwick, N.S.	7½
Canning, N.S.	6½
Item 242	9½
Item 243	
From	
Windsor Jct., N.S.	5½
Truro, N.S.	6½
Item 265	4½

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52111

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

Tuesday, the 30th day of July, A.D. 1935.

S. J. McLean, *Assistant Chief Commissioner.*
G. A. Stone, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 973, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 973, approved herein, are as follows:—

To	Cents per 100 pounds
Guelph, Ont.	45½
Simcoe, Ont	45
Ottawa, Ont.	47½

S. J. McLEAN,
Assistant Chief Commissioner.

CIRCULAR No. 238

Ottawa, July 26, 1935.

File No. 11026.75. Re *Highway Crossings*

Would you kindly furnish the Board with a statement showing the total number of highway crossings on your line in Canada that are protected, giving the number protected by each different form of protection, that is, gates, bells, wigwags, flashing lights, overhead bridges, subways, or any other means of protection; also the number of unprotected highway crossings on your line in Canada.

Would you please have these subdivided with the information shown as to provinces.

P. F. BAILLARGEON,
Secretary.

SUMMARIES OF ORDERS ISSUED BY THE BOARD OF RAILWAY COMMISSIONERS

52061. July 4—Declaring Great Northern Ry. crossing, first south of Ardley Station, B.C., protected to Board's satisfaction.

52062. July 6—Ceclaring C.P.R. crossing of Montclair avenue, east of Hull East Station, Que., protected to Board's satisfaction.

52063. July 6—Authorizing city of Toronto, Ont., to construct Royce avenue across two sidings of C.P.R.

52064. July 10—Approving construction of pipe line under C.N. Rys. at mileage 106·56 Skeena Subd'n, B.C., by Anglo-British Columbia Packing Co., Ltd.

52065. July 10—Approving and authorizing clearances at conveyor bridge and canopy over siding tracks of Essex Terminal Ry. at plant of Kelsey Wheel Co., Ltd., at Windsor, Ont.

52066. July 10—Amending Order 16857, June 11, 1912, by striking out words "five o'clock" in twelfth line of operative part and substituting therefor words "six o'clock"—*re* movements over G.T.R. spur for Export Lumber Co., Ltd., on Preston street, Ottawa, Ont.

52067. July 10—Approving revised location of C.N. Rys. line between mileage 30·37 and 30·99 Tete Jaune Subd'n, near Shere, B.C.

52068. July 11—Declaring Michigan Central R.R. crossing of Victoria avenue, Ridgetown, Ont., protected to Board's satisfaction.

52069. July 10—Approving C.P.R. Telegraph Co.'s Supp. 12 to Tariff C.R.C. No. 27, effective July 1, 1935.

52070. July 12—Declaring Algoma Central and H.B. Ry. crossing, second south of Odena (Root River crossing), Ont., protected to Board's satisfaction.

52071. July 12—Authorizing C.P.R. to close crossings at mileage 91·3, 92·4, 118·1, 119·4, and 4·1, Altawan and Stirling Subd'ns, Alta.

52072. July 13—Permitting C.N. Rys. to file on one day's notice a supplement to their Tariff C.R.C. No. E-1807, to correct errors.

52073. July 12—Approving location and details of C.N. Rys. portable shelter to be erected at Audy, Que.

52074. July 13—Declaring C.P.R. crossing, first west of Whitby Station, Ont., protected to Board's satisfaction.

52075. July 13—Approving diversion of highway and crossing of C.N. Rys. on east and west road allowance between Sections 23 and 26-46-11 W4M, near Kinsella, Alta.

52076. July 15—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tariffs filed by by C.N. Rys. under sec. 3.

52077.
52078. July 15—Approving under Maritime Freight Rates Act. sec. 3, sub.-sec. 3, tolls pub-
52079. lished in tariffs and supplements filed by C.P.R. under sec. 9.

52080.
52081. July 15—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls pub-
52082. lished in certain tariffs filed by Dominion Atlantic Ry. under sec. 9.

52083. July 16—Authorizing C.N. Rys. to operate their trains over fourth crossing east of Richmond Station, Que., at a speed greater than ten miles an hour.

52084. July 16.—Approving location and layout of station to be constructed by C.N. Rys. at Belle River, P.E.I.

52085. July 15—Approving agreement between Bell Telephone Co., and Yarmouth Rural Telephone Co., Ltd.

52086. July 15—Approving agreement between Bell Telephone Co. and Toronto General Trusts Corporation, operating Suroff Telephone System.

52087. July 17—Authorizing C.N. Rys. to relocate siding serving Rochester and Pittsburgh Coal Co., crossing Bridge street, Point St. Charles, Montreal, P.Q.

52088. July 17—Authorizing C.P.R. to remove their station agent at McGillivray, B.C. (caretaker to be appointed).

52089. July 17—Authorizing C.P.R. to close crossings at mile 14·7, 16, 16·5, and 17·3, Altawan Subd'n, Sask.

52090. July 18—Approving change in location of crossing of Quebec Railway, Light and Power Co. at Montmorency, Que.

52091. July 19—Authorizing C.P.R. to construct submarine cable across Little Current Channel, from Goat Island to Manitoulin Island, at Little Current, Ont.

52092. July 19—Approving relocation of C.P.R. Station at West Montrose, Ont.

52093. July 19—Authorizing T. and N.O. Ry. to put into effect following amendment to Rule 221 of General Train and Interlocking Rules:—

> "Except at train order offices at those initial statitons at which all trains are required to obtain terminal clearance, a fixed signal must be used, which must indicate 'Stop' when trains are to be stopped for train orders. When there are no train orders, the signal shall indicate 'Proceed,' except as provided for in Rule 91.

"At a station so equipped the operator, on receipt of the signal '31' or '19,' followed by the direction, must immediately display the stop signal of the direction indicated, and then reply 'Stop displayed,' adding the direction; and until the orders have been delivered or annulled the signal must not be restored to 'Proceed,' except as may be authorized by train order."

52094. July 20—Declaring C.P.R. crossing of Queen street, mile 1·21 Obico Cut-off, Toronto Terminals, Ont., protected to Board's satisfaction.

52095. July 20—Authorizing C.P.R. to operate over crossing of Talbot street, St. Thomas, Ont., at a speed greater than 10 miles an hour.

52096. July 20—Authorizing C.N. Rys. to rearrange mechanical interlocker at crossing over C.P.R. at mileage 33·7 Neepawa Subd'n, Man.

52097. July 20—Authorizing C.N. Rys. to replace mechanical interlocker at crossing over C.P.R. at Coniston, Ont.

52098. July 22—Authorizing Mun. of Marston, Co. Compton, Que., to construct a highway crossing over C.P.R. Megantic Subd'n, mile 16·3.

52099. July 22—Approving relocation of C.P.R. station at Ariss, Ont.

52100. July 22—Directing C.P.R. to move the present bell at the crossing of St. Hyacinthe street, Hull, Que., to the southeast angle of the crossing.

52101. July 22—Refusing application of residents of Hants and Halifax Counties to reopen question of Truro road crossing between Milford and Elmsdale, N.S., directing that C.N. Rys. crossing on cross-road at Lantz Station be straightened out, and that a farm crossing be constructed for use of J. B. Miller in vicinity of his clay pit a short distance from old Truro road crossing.

52102. July 25—Permitting H. G. Toll, agent, to file on one day's notice a supplement to his Tariff C.R.C. No. 646 to correct errors in minimum weight provisions in items 1340A and 1340B.

52103. July 24—Approving and authorizing clearances of coal-loading platform on C.P.R. spur serving Ashfield & Fitten Co., at Pennlyn, N.B.

52104. July 25—Relieving C.N. Rys. from fencing between mileage 39·40 and 40·04, Central Butte Subd'n, on golf course in vicinity of Moose Jaw, Sask.

52105. July 25—Approving Supp. 2 to agreement between Bell Telephone Co. and Woodbridge & Vaughan Telephone Co., Ltd.

52106. July 26—Relieving Quebec Central Ry. from posting certain tariffs at stations where population is 1,000 or less.

52107. July 29—Authorizing C.P.R. to construct extension to siding to serve Imperial Trusts Co., of Canada, at Toronto, Ont.

52108. July 29—Approving plan showing revision of circuits for automatic flagmen and electric locomotive gong protection at crossing of Pembina highway by C.N. Rys. at Winnipeg, Man.

52109. July 30—Approving under Maritime Freight Rates Act, sec. 3, sub.-sec. 3, tolls published in Tariff C.R.C. No. E-4756 filed by C.P.R. under sec. 9.

52110. July 30—Approving under Maritime Freight Rates Act, sec. 3, sub.-sec. 3, tolls pub-
52111. lished in Supp. 20 to Tariff C.R.C. No. 906 and in Tariff C.R.C. No. 973 filed by Dominion Atlantic Ry. under sec. 9.

52112. July 30—Authorizing C.N. Rys. to construct highway crossing on north and south road allowance between NW¼ of Sec. 36 and NE¼ of Sec. 35-29-3 W3M., Sask.

52113. July 31—Dismissing complaint on behalf of employees of C.N. Rys. freight sheds in Winnipeg, Man., against present hours put into effect by C.N. Rys. contrary to rules laid down by Board for the governing of freight sheds in Canada.

52114. July 31—Approving abandonment of operation of portion of C.N. Rys. Patricia Bay Subd'n from near Patrica Bay Jct. to Patrica Bay, B.C., mileage 1·38 to 15·53, including the Sidney Branch, mileage 0·00 to 1·07, a total distance of 15·82 miles.

52115. Aug. 1—Declaring Great Northern Ry. crossing of Powell street, Vancouver, B.C., satisfactorily protected so long as present speed limitation of eight miles an hour is in effect.

52116. July 31—Authorizing C.N. Rys. to cross road diversion in the NW¼ of Sec. 10-29-30 W4M., and at mileage 1·45 Drumheller Subd'n, Alta.

52117. July 30—Approving plan showing automatic signal protection proposed to be installed at crossing of C.P.R. by C.N. Rys. at Lachevrotière, Que.

52118. Aug. 1—Authorizing Northern Alberta Rys. to construct highway crossing in NE¼ of Sec. 34-77-24 W5M., near Watino, Alta.

52119. July 31—Authorizing C.P.R. to construct spur to serve McCurdy Supply Co., Ltd., in NW¼ of Sec. 29-11-5 EPM., Man.

52120. July 31—Approving the abandonment of operation of the Vancouver, Victoria and Eastern Ry. and Nav. Co.'s branch line between Colebrook and Ladner, B.C.

52121. Aug. 6—Authorizing C.P.R. to publish on one day's notice a supplement to Tariff C.R.C. No. E-4746 cancelling Pontypool, Ont., as a station at which collection and/or delivery service is performed.

52122. Aug. 1—Declaring C.N. Rys. crossing, second north of Inglewood Station, Ont., satisfactorily protected so long as speed limitation of six miles an hour is in effect.

52123. Aug. 3—Authorizing C.N. Rys. to reconstruct bridge over highway at mileage 145·3 Brazeau Subd'n, Alta.

52124. July 31—Declaring C.P.R. crossing, first east of station at Dryden, Ont., protected to Board's satisfaction provided stop signs are installed and embankments cut away.

52125. Aug. 1—Refusing application of residents of Eldred, Sask., and vicinity for an order directing C.N. Rys. to move their siding from Dumble, mileage 45·1, to a new location at mileage 42·9 Shellbrook-Big River Branch, and directing C.N. Rys. to stop their trains at a point just north of line between sections 8 and 17-54-7 W3M., in lieu of stop now being made at Dumble Stn., Sask.

52126. July 29—Approving plan showing changes in interlocking plant at crossing of C.N. Rys. by C.P.R. at Fergus, Ont.

52127. Aug. 2—Declaring C.N. Rys. crossing of George street South and Romaine street, Peterboro, Ont., satisfactorily protected so long as present speed limitation of 10 miles an hour is maintained.

52128. Aug. 3—Authorizing Nova Scotia Dep't Highways to construct a highway crossing over C.N. Rys. at mileage 15·75 St. Peter's Subd'n, at False Bay, N.S.

52129. Aug. 3—Approving agreement between Bell Telephone Co. and Northcote Farmers Telephone Co., Ltd.

52130. Aug. 3—Approving agreement between Bell Telephone Co. and Leslie Davis, owner of the Rankin Telephone Company.

52131. Aug. 3—Approving agreement between Bell Telephone Co. and Masham Telephone Company, Inc.

52132. Aug. 3—Approving agreement between Bell Telephone Co. and Eastern Townships Telephone Co., Ltd.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXV Ottawa, September 1, 1935 No. 12

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Application of the Canadian National Railways for an Order granting it leave to abandon the operation of that portion of its Lovett Subdivision, in the Province of Alberta, between Foothills (M. 50·7) and Lovett (M. 55·3), a distance of 4·6 miles.

(File No. 39310.6)

JUDGMENT

COMMISSIONER STONE:

This is an application by the Canadian National Railways under section 165A of the Railway Act, section 2, subsection 3 of the Canadian National-Canadian Pacific Act, 1933, and all other appropriate statutory provisions, for an order granting it leave to abandon the operation of a portion of its Lovett Subdivision, in the province of Alberta, between Foothills (M. 50·7) and Lovett (M. 55·3), a distance of 4·6 miles.

This branch line of railway was opened in 1913 and operations were treated as operations under construction until January 1, 1916, and then operated by the Grand Trunk Pacific Railway Company until March 9, 1919, when that company went into receivership. The line was operated under the jurisdiction of the Minister of Railways and Canals as receiver. The receivership terminated on May 31, 1927, and since that date the line has been operated as part of the Grand Trunk Pacific Railway Company, which in turn is owned by the Canadian National Railways.

The case was heard at Edmonton, Alberta, on July 6, 1935, in the presence of counsel for the applicant; Mr. J. S. Cowper and Mr. R. Babiche appearing for the residents of Lovett. No representation was made at the hearing on behalf of those alleged to be engaged in coal-mining operations, but a letter was submitted by Mr. J. B. Shearer setting forth his position as a lumber operator.

From Foothills to Lovett the distance is shown as 4·6 miles, and extending from Lovett there is an industrial spur of 1·7 miles, which is also included in this application, making a total distance of 6·3 miles, and is the end segment of the branch line of the Canadian National Railways which connects with its main line at Edson.

Estimates were filed by the railway company showing loss in revenue:—

1931	$4,175 00
1933	$5,673 00
1934	$3,884 00

or an average approximate loss per mile of $1,000 for through branch line trackage, plus deferred cost for maintenance.

Statements filed relative to annual car movements show the following:—

	Inward	Outward	Total
1931	1	90	91
1933	7	19	26
1934	8	5	13

Submissions made as to the physical characteristics of the roadbed and line to be abandoned recorded the necessity of immediate renewal of six pile trestles built in 1912; most of the thirty-six wooden culverts; heavy renewal of ties and ballast; while 75 per cent of the 60-pound rails were fit for relaying. This confirms the opinion of the Board's Engineer, who made a personal inspection of the line on October 11, 1934, and would entail the immediate expenditure of $36,000 to place this portion of the line in a safe and fit condition for future operation.

For operating purposes the actual track mileage to be abandoned is now shown as between 51·25 and 57·28. Note Exhibit No. 1 and estimated amount of salvage as $12,000.

Mr. D. O. Owens, K.C., counsel for the railway company, in concluding his presentation of the case made the situation quite clear for the applicant when he stated, p. 2072, Vol. 624:—

> "The management of the Canadian National Railways has been entrusted, in its relationship so far as the Dominion of Canada as a whole is concerned, to a Board of Trustees for the people of Canada, who are really the actual shareholders in the railway. It is anticipated and expected, and in fact obligatory by law, that the management shall operate the railway as economically and as efficiently as is possible.

There is no prospect of any remunerative business return to offset continued operating deficits and decreased revenues, in addition to the costs involved to place the line in a safe condition for future operation, which is a matter of general public concern.

The branch line in question runs through a non-agricultural district; it is located in what is known as the Brosseau Forest Reserve. Between Lovett and Foothills there are no highways or roads, except an old construction or tote road used by saddle-pack horses, the road being unsuitable for other methods of transportation.

Formerly, the only industries on the line were coal and timber, and the line was built into Lovett in 1912 to serve the North American Collieries Limited, which ceased operation in 1921. History shows that the various coal mining companies in the territory had unprofitable operation and now cease to exist.

In 1933 nine cars of coal were shipped from the Confederation Mine for testing purposes. Three of these cars were shipped to the Canadian National Railways, and that company alleges that all cars were refused on account of the poor quality of the coal.

It is stated that the population served is approximately 100, which includes 28 registered voters.

There are two general stores at Lovett and a Forestry Agency in the district. On account of there being no school at Lovett, about eighteen children have to travel to Coal Spur to attend school there.

This case is similar to many other applications for abandonment of lines which have been filed with the Board by the Canadian National Railways, and is covered by amended section 165A of the Railway Act (Chapter 47, 23-24 George V), which became effective May 23, 1933.

From the evidence submitted, local interest in the continued operation of this line cannot consistently be considered as paramount to the interest of the

public generally, but as Mr. J. B. Shearer by letter stressed the necessity of continuing the operation of the line for his lumber business or, in the event of the line being closed, that provision be made for him to take out his equipment and supplies, I would grant the application to take effect sixty days from the date of the issuance of the order; the same to be without prejudice to whatever rights or remedies may be open to the parties in courts of competent jurisdiction. August 13, 1935.

Concurred in by the Assistant Chief Commissioner and Commissioner Norris.

ORDER No. 52183

In the Matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 165A of the Railway Act, for approval of the abandonment of operation of a portion of the Lovett Subdivision, in the Province of Alberta, between Foothills, mileage 50·7, and Lovett, mileage 55·3, a distance of 4·6 miles.

File No. 39310·6.

THURSDAY, the 15th day of August, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
HON. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Edmonton, July 6, 1935, in the presence of counsel for and representatives of the applicants and residents of Lovett and district, and what was alleged,—

It is ordered: That the abandonment of operation of a portion of the applicants' Lovett Subdivision, in the province of Alberta, between Foothills, mileage 50·7, and Lovett, mileage 55·3, a distance of 4·6 miles, be, and it is hereby, approved; such abandonment to become effective October 15, 1935, so as to enable J. B. Shearer, lumber operator, to remove his equipment and supplies; and that the approval herein granted be without prejudice to whatever rights or remedies may be open to the parties in courts of competent jurisdiction.

S. J. McLEAN,
Assistant Chief Commissioner.

Application of the Canadian National Railways for an Order granting leave to abandon the operation of its Locksley Subdivision, in the Province of Ontario, between Golden Lake (mile 0·0) and National Junction (mile 20·2), a distance of 20·2 miles.

File 39310.14

Heard at Pembroke, Ontario, April 24, 1935.

JUDGMENT

COMMISSIONER STONEMAN:

The Canadian National Railway Company applies, under chapter 47 of the Statutes of Canada for the year 1932-33, for the approval of the Board to the abandonment of the operation of its Locksley Subdivision, in the province of Ontario, between Golden Lake (mile 0·0) and National Junction (mile 20·2), a distance of 20·2 miles.

Before the year 1933, unless there was a statutory or contractual provision requiring a railway company to operate its road, it was at liberty to abandon the whole or any portion of its line. The statute above referred to, which amends the Railway Act by adding section 165-A, provides that:—

> "The company may abandon the operation of any line of railway with the approval of the Board, and no company shall abandon the operation of any line of railway without such approval."

In the application of the Canadian Pacific Railway Company for approval of the abandonment of operation of its line between Kirkella and McAuley, in the province of Manitoba, heard by Hon. C. P. Fullerton, the then Chief Commissioner of the Board, and reported in C.R.C. Vol. 41, p. 388, he says:—

> "Unlike the corresponding provision in the Interstate Commerce Act, Parliament has laid down no principle upon which the Board should act in granting or withholding approval. Section 1 (18) of that Act provides that:—
>
> > 'No carrier by railroad subject to this Act shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment.'
>
> "In a majority of the cases in which the Interstate Commerce Commission issued certificates authorizing abandonment, referred to and summarized in the index to Vol. 131, I.C.C.R., p. 805 *et seq.*, it will be noted that either the industries served had ceased to operate, or that other adequate transportation facilities, either by rail or truck, were available, and that serious public inconvenience would not result from the abandonment.
>
> "The American decisions lay down that the mere fact that a branch line of railroad does not yield a profit from operation will not in every case justify its abandonment.
>
> > 'The point at which abandonment shall be considered justifiable is a matter of sound judgment, and must be determined by the circumstances of each case.' Abandonment of line by Southern Railway, 105, I.C.C.R. 228, at p. 233.
>
> "The issue as laid down by the Inerstate Commerce Commission is whether or not the inconvenience occasioned by abandonment and the consequent losses to the public outweigh the burden that continued operation of the branch would impose upon the railway and upon interstate commerce. See Detroit, Toledo and Ironton R. Co., Abandonment, 187, I.C.C.R. 443, at p. 438.
>
> "In Chicago, Milwaukee, St. Paul and Pacific R. Co., Abandonment, 184, I.C.C.R. 687, at p. 692, the Commission said:—
>
> > 'A community unable to support a railroad cannot justly demand its continued operation at a loss in order to maintain the value of private property within that community. On the other hand, mere showing of unprofitable operation of a portion of a railroad system does not necessarily justify abandonment of that portion; but there is a point at which lack of earning power of part of a system justifies its abandonment without regard to the system operations as a whole. The transportation needs of a community or section must be weighed against the burden that the cost of rehabilitation, maintenance, and operation would impose upon commerce. The point at which abandonment shall be considered justifiable is a matter of sound judgment, and must be determined by the circumstances of each case.'"

The railway, from Pembroke to Golden Lake, is a line authorized under the name of The Pembroke Southern Railway Company, the objective being Pembroke-Golden Lake.

The Ottawa, Arnprior and Parry Sound, which was afterwards absorbed by the Canada Atlantic, began operations approximately in 1898, and the Pembroke Southern Railway was constructed to Golden Lake and was there connected with the Ottawa, Arnprior and Parry Sound, which is the present Canadian National, Ottawa-Madawaska-Parry Sound line, the Locksley Subdivision being the connection into Pembroke.

The present train service on the Locksley Subdivision, Golden Lake to Pembroke, a distance of 21·1 miles, is:—

Northbound	Leave	Arrive
Psgr. train #89, daily ex. Sun.	Golden Lake ..11.00 a.m.	Pembroke ..11.45 a.m.
Mixed train #259, daily ex. Sun...	Golden Lake .. 6.50 p.m.	Pembroke .. 7.50 p.m.

Southbound	Leave	Arrive
Psgr. train #90, daily ex. Sun..	Pembroke .. ..2.05 p.m.	Golden Lake 2.49 p.m.
Mixed train #258, daily ex. Sat. and Sun. ..	Pembroke .. ..6.55 a.m.	Golden Lake 7.55 a.m.
Mixed train #260, Sat. only	Pembroke .. ..8.30 a.m.	Golden Lake 9.30 a.m.

The railway operating revenues for the year ending September 30, 1931, were $50,544; for the year ending December 31, 1933, they were $13,434, and for the year ending December 31, 1934, they were $18,918. The railway company's operating expenses (out-of-pocket only) for the same period were as follows: for the year ending September 30, 1931, $61,616; for the year ending December 31, 1933, $43,166; and for the year ending December 31, 1934, $41,009. The loss for this three-year period amounted to $11,072 in 1931, $29,732 in 1933, and $22,091 in 1934.

On June 22, 1935, Mr. Rand, Commission Counsel of the Canadian National Railways, wrote the Board with regard to the above figures set out for the year ending September 30, 1931, wherein he shows there is included in the sum shown of $23,897 an amount of $1,680 representing divisional supervision, and for the year 1934, his figures show the sum of $17,053, which includes an amount of $1,200 for supervision. Both these items should be deducted in order to make the losses shown as out-of-pocket expenses only. This would change the figures represented, so the loss for the year 1931 would be shown as $9,392, and for the year 1934, $20,891.

At the request of counsel for the town of Pembroke, the Canadian National Railways filed a statement showing inward and outward tonnage and system revenue for the years 1924-25-26-27. The figures filed for the years previous to 1931 have no bearing on this case. Consideration only is given to the figures dealing with the years 1931 to 1934.

Because of the contradictory statements made with regard to the population as well as the location and type of roads in the locality that would be affected in case of abandonment, the interested parties were asked to agree upon a plan showing details as to roads and the number of people living in territory adjacent to Locksley Subdivision. This plan was filed with the Board June 19 and shows the population adjacent to the Locksley Subdivision to be approximately 1,950. The plan above referred to divides the territory tributary to the Locksley Subdivision into blocks. It sets out the number of residents in each block, and shows in detail the location and type of roads leading to the present shipping centres on the Locksley Subdivision. The plan shows dirt roads in all parts of the territory affected, except the extreme east and south, which is served by either gravel or macadam roads. The distance people in this territory would be from shipping facilities, in the event of the abandonment of this subdivision, would be, in some cases, about 23 miles. The most northerly

of these blocks, said to have a population of 600, shows the distance that now has to be travelled by road to get to Woito Station from the extreme end of the road in the southwest corner of the block to be 10·8 miles and 12·2 miles to Locksley Station. Locksley Station to Pembroke is about 8 miles—so that the distance from the extreme southwest corner road would be about 20 miles to Pembroke.

West of the southwest portion of the above-mentioned block there is a small block 3½ miles by 2 miles, said to contain 50 people. By round-about roads, the distance to Pembroke would be about 22 miles, although apparently there are no roads on this block; the nearest being the southwest corner road on the 600 block. The round-about roads would make the distance to Golden Lake from this point 23 miles.

The block said to contain 700 people in the north and east part of the township of Wilberforce has a macadam road in the eastern portion and the balance has dirt roads, except the extreme west portion, which apparently has none. The centre of this block is about 10 miles from Golden Lake and about 14 miles from Pembroke.

Under existing conditions, by existing roads and best connections, from the extreme southeast corner of the above block to Locksley Station, the distance is 10·2 miles; to Woito Station 11·2 miles, and to Dore Bay Station 9·6 miles; and from the centre of the block to Locksley Station is about 8·6 miles; Dore Bay Station 6·4 miles, and to Woito Station 5·4 miles.

South of the above-mentioned block is an irregular shaped block said to contain 600 people. The settlement of Germanicus is about the centre of the block. The distance to Dore Bay and Golden Lake is about the same. Dore Bay is 6·4 miles from Golden Lake by road. No part is more than 10 miles from Golden Lake.

While the statement filed by the applicant showing operating revenues and out-of-pocket operating expenses only show that the loss for the period which the figures cover is substantial, against those figures must be weighed the public inconvenience which would result from the abandonment. The evidence shows that a substantial number of persons would be affected. The distance which they would have to travel is shown on the plan filed; in some cases it would be necessary to travel 23 miles to reach shipping facilities, over roads which, at certain seasons of the year, are almost impassable.

While the applicant states that some trucking has been done, the evidence is clear as to the fact that whatever trucking was carried on was by a private individual hauling his own goods. There are no transportation facilities available to the public in the territory, except the railway.

I feel sure that, in spite of the substantial loss shown by the applicant, the inconvenience to the public would be of such a serious nature that, for the present at least, the application should be refused. Order to issue dismissing the application.

Ottawa, August 14, 1935.

Concurred in by the Assistant Chief Commissioner and Commissioner Norris.

ORDER No. 52184

In the Matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 165A of the Railway Act, for approval of the abandonment of operation of their Locksley Subdivision, in the Province of Ontario, between Golden Lake (mileage 0·0) and National Junction (mileage 20·2), a distance of 20·2 miles.

File No. 39310·14.

MONDAY, the 19th day of August, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
HON. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Pembroke, April 24, 1935, in the presence of counsel for the applicants, the town of Pembroke and other interested parties, and upon considering the evidence offered and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

S. J. McLEAN,
Assistant Chief Commissioner.

Application of the Canadian National Railways for an Order granting it leave to abandon the operation of that portion of its Otterville Subdivision in the Province of Ontario, between Simcoe Junction (M. 9·1) and Otterville (M. 23·3), a distance of 14·2 miles.

(File 39310.19)

JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

What is involved is a portion of the Otterville Subdivision of the Canadian National Railways, province of Ontario, said portion being located between Simcoe Junction and Otterville, a distance of some fourteen miles. The railway was opened for operation in 1875, and was built under the charter of the Port Dover and Lake Huron Railway under the statutory authority of the Ontario Act, 35 Victoria, Chapter 53 of 1872. Later by amalgamation it became part of the Grand Trunk Railway Company of Canada, which in turn was amalgamated with the Canadian National Railway Company in 1923.

The territory served is not a good farming district on account of the sandy nature of the soil. Agricultural production is limited to tobacco, vegetables and small fruits. The district in question is connected up with the main highways by means of country roads which are kept open all year. It is not contended that there is any great amount of bus competition, but, at the same time, it is stated considerable trucking operations are maintained, which would result in loss of revenues. There has been no train service operated over and no maintenance done on the line since November, 1933.

At the hearing in Simcoe on May 8, 1935, there was no local opposition to the granting of the application of the railway. It was pointed out by counsel for the railway that with the application allowed, no point would be more than two miles away from the railway centre. Mr. Wardell, councillor for the town-

ship of South Norwich, appeared and stated his request on behalf of the municipality was that if the road were abandoned, they would like to have the roadbed retained for the township so that the gravel would be available for highway use. Counsel for the railway said he was not in a position to commit the railway, but its general practice was to dispose of rights of way to the adjoining owners. In some cases rights of way had been transferred for highway purposes. Each case had to be considered on its own merits. Intimated the railway which he represented was quite agreeable to entering into a discussion with the municipality in regard to the use by it of the highway material or gravel which had been on the roadbed. This was the only point the municipality desired to emphasize.

The Board had received a communication from the Tip-Top Canners, Limited, per W. B. Hislop, president thereof, located at Greensville, Ontario. This was dated April 15, 1935. It referred to Mr. Hislop having seen in the newspapers the reference to the application to abandon the branch line. He stated that his company had a canning factory situated at Otterville, and that it required the railway service for shipping its cans from Simcoe to Otterville, and canned goods from Otterville to points outside. Stated he would be pleased to be advised whether the Board thought there was a possibility of this line being abandoned.

Mr. Hislop was not present at the hearing, but it was set out in the record that the Assistant Chief Commissioner stated that Mr. Hislop would be advised of the hearing, and asked to give a written statement setting forth his position, and a copy would be sent forth to the Canadian National Railways. Mr. Hislop was written to accordingly, and in letter dated May 25, 1935, answered as follows:—

> "In further reference to your letter of May 14, we beg to advise that we have a canning factory situated at Otterville and one of the reasons that we built the plant at Otterville was because of the short distance from Simcoe to Otterville, from which we receive the cans.
>
> "We have no objection to the operation of a portion of the Otterville subdivision between Simcoe Junction and Otterville, a distance of 14·2 miles being abandoned, as we understand our cans now go around by Brantford and we receive good service.
>
> "We trust that the Board will not eventually close the service from Brantford to Otterville, as this would necessitate bringing all our cans in by truck, at an added cost. For your information might say that our freight account with Otterville each year amounts to approximately $15,000."

Under date of June 19, 1935, Mr. Rand, Commission Counsel, Canadian National Railways, wrote as follows:—

> "Your letter of the 4th instant: at the present time owing to the condition of the line between Simcoe and Otterville, traffic is routed via Jarvis, Caledonia, Brantford and Norwich Junction to Otterville. There is of course no intention at the present time to abandon the service between Brantford and Norwich Junction and thence to Otterville.
>
> "The shortest route between Simcoe and Otterville, other than the Otterville Subdivision, is via Tillsonburg, the mileage of which is 42 miles as against 70 miles via Brantford. In the event of the abandonment the rate between Simcoe and Otterville will be governed by the shortest mileage route, namely, via Tillsonburg, although in fact the carriage may continue to be made via Jarvis and Brantford owing to a better service available.
>
> "According to our information, in 1933 the Tip-Top Canners received 32 cars via rail from Simcoe and in 1934, 29 cars by rail and 2 cars by

truck. This shows that there is an actual truck competition, although we have no information as to the rates. It is obvious that the small number of cans shipped from Simcoe to Otterville would not of itself warrant the continuance of operation of this branch.

"I am sending a copy of this letter to Tip-Top Canners, Limited."

The Tip-Top Canners, Limited, were written to referring to Mr. Rand's letter of June 19, and asking them for their comments, if any, thereon. There being a delay in receiving an answer, they were further traced for same. The Board is now in receipt of a communication acknowledging receipt of the Board's letters, and saying that they beg to advise the Board that they have no objection to the abandoning of the above portion of the Canadian National Railway which is involved in the present application.

The application of the railway may, therefore, be allowed.

August 15, 1935.

Deputy Chief Commissioner:—I concur. The special conditions of this case justify the Board in granting the application.

Concurred in by Commissioner Norris.

ORDER No. 52185

In the Matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 165A of the Railway Act, for approval of the abandonment of operation of a portion of their Otterville Subdivision, in the Province of Ontario, between Simcoe Junction (mileage 9·1) and Otterville (mileage 23·3), a distance of 14·2 miles.

File No. 39310·19.

MONDAY, the 19th day of August, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
HON. T. C. NORRIS, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Simcoe, May 8, 1935, in the presence of counsel for the applicants, and what was alleged; and upon the written consent of Tip-Top Canners, Limited,—

It is ordered: That the abandonment of operation of a portion of the applicants' Otterville Subdivision, in the Province of Ontario, between Simcoe Junction, mileage 9·1, and Otterville, mileage 23·3, a distance of 14·2 miles, be, and it is hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52121

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for permission to amend Tariff C.R.C. No. E-4746, so as to cancel Pontypool, Ontario, as a station at which collection and/or delivery service is performed, on less than statutory notice.

File No. 27612.121

TUESDAY, the 6th day of August, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon its appearing that the applicant company is not now in a position to arrange collection or delivery service at the said point,—

It is ordered: That the applicant company be, and it is hereby, granted leave to file, on one day's notice, a supplement to its said Tariff C.R.C. No. E-4746 cancelling Pontypool, Ontario, as a station at which collection and/or delivery service is performed.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52133

In the matter of the application of the Canadian Freight Association, on behalf of the Canadian National Railways and the Canadian Pacific Railway Company, hereinafter called the "Applicant," for permission to file, on less than statutory notice, supplements advancing rates now published in Canadian National Railways' Supplement No. 16 to Tariff C.R.C. No. E-2159, and Canadian Pacific Railway Supplement No. 22 to Tariff C.R.C. No. E-4491, provided similar permission is received from the Interstate Commerce Commission.

File No. 27612.120

TUESDAY, the 6th day of August, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon its appearing that, through a misunderstanding, Canadian lines made reduced rates on grain, in bulk, ex-lake, and product of ex-lake or ex-water grain from Montreal, Que.; Prescott, Ont.; Quebec, Que.; and Sorel, Que., applicable to a wider destination territory in New England than was necessary to meet competition through the American port of Ogdensburg, N.Y.; and in order to offset complaints from New England carriers not affected by the changed rates from Ogdensburg, N.Y., it is desired to restrict the reduced rates from Canada to the proper New England territory, effective August 17, 1935,—

It is ordered: That, provided similar permission is received from the Interstate Commerce Commission, the applicant be, and it is hereby, granted leave to file, on five days' notice, supplements advancing the said rates now published in Supplement No. 16 to Canadian National Railways Tariff C.R.C. No. E-2159 and Supplement No. 22 to Canadian Pacific Railway Tariff C.R.C. No. E-4491.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52138

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.10

WEDNESDAY, the 7th day of August, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 7 to Tariff C.R.C. No. 3, filed by the Maritime Coal, Railway and Power Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 7 to Tariff C.R.C. No. 3, approved herein, is 42½ cents per net ton.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52139

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 7th day of August, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 5 to Tariff C.R.C. No. 874, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 5 to Tariff C.R.C. No. 874, approved herein, are as follows:—

From	Cents per 100 pounds
Ellerhouse, N.S. to Windsor, N.S.	17½
Falmouth, N.S. to Hantsport, N.S.	19
Avonport, N.S. to Port Williams, N.S.	19½
Kentville, N.S.	22½
Coldbrook, N.S. to Berwick, N.S.	24½
Aylesford, N.S. to Kingston, N.S.	26½
Wilmot, N.S. to Annapolis Royal, N.S.	29
Clementsport, N.S. to Digby, N.S.	30½
North Range, N.S. to Yarmouth, N.S.	31½
Brooklyn, N.S. to Mosherville, N.S.	19½
Clarksville, N.S. to Kennetcook, N.S.	22½
Pattersons, N.S. to Burton, N.S.	24½
South Maitland, N.S. to Clifton, N.S.	26½
Lower Truro, N.S. to Truro, N.S.	24
Mill Village, N.S. to Kingsport, N.S.	24½
Billtown, N.S. to Grafton, N.S.	
Somerset, N.S. to Weston, N.S.	26½

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52140

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 7th day of August, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 7 to Tariff C.R.C. No. 875, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 7 to Tariff C.R.C. No. 875, approved herein, are as follows:—

From	Cents per 100 pounds
Ellerhouse, N.S.	
Newport, N.S.	
Windsor, N.S.	21½
to	
Hantsport, N.S.	
Avonport, N.S.	
to	22
Port Williams, N.S.	
Kentville, N.S.	22½
Coldbrook, N.S.	
to	25
Berwick, N.S.	
Aylesford, N.S.	
to	25½
Kingston, N.S.	
Wilmot, N.S.	
to	27½
Annapolis Royal, N.S.	
Clementsport, N.S.	
to	30
Digby, N.S.	
North Range, N.S.	
to	34½
Yarmouth, N.S.	
Brooklyn, N.S.	
to	22
Mosherville, N.S.	
Clarkville, N.S.	
to	22½
Kennetcook, N.S.	
South Maitland, N.S.	
to	25½
Lower Truro, N.S.	
Mill Village, N.S.	
to	
Kingsport, N.S.	25
Billtown, N.S.	
to	
Grafton, N.S.	
Somerset, N.S.	
to	25½
Weston, N.S.	

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52141

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 7th day of August, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 974, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to be reported as follows:—

From	Cents per 100 pounds
Ellerhouse, N.S.	
Newport, N.S.	
Windsor, N.S.	13
to	
Hantsport, N.S.	
Avonport, N.S.	
to	13½
Port Williams, N.S.	
Kentville, N.S.	14
Coldbrook, N.S.	
to	16
Berwick, N.S.	
Aylesford, N.S.	
to	16½
Kingston, N.S.	
Wilmot, N.S.	
to	18
Annapolis Royal, N.S.	
Clementsport, N.S.	
to	20
Digby, N.S.	
North Range, N.S.	
to	23½
Yarmouth, N.S.	
Brooklyn, N.S.	
to	13½
Mosherville, N.S.	
Clarkville, N.S.	
to	14
Kennetcook, N.S.	
South Maitland, N.S.	
to	16½
Lower Truro, N.S.	
Mill Village, N.S.	
to	
Kingsport, N.S.	16
Billtown, N.S.	
to	
Grafton, N.S.	
Somerset, N.S.	
to	16½
Weston, N.S.	

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 974, approved herein, is as follows:—

From	Cents per 100 pounds
Ellerhouse, N.S.	
Newport, N.S.	
Windsor, N.S.	16½
to	
Hantsport, N.S.	
Avonport, N.S.	
to	17
Port Williams, N.S.	
Kentville, N.S.	17½
Coldbrook, N.S.	
to	20
Berwick, N.S.	
Aylesford, N.S.	
to	20½
Kingston, N.S.	
Wilmot, N.S.	
to	22½
Annapolis Royal, N.S.	
Clementsport, N.S.	
to	25
Digby, N.S.	
North Range, N.S.	
to	29½
Yarmouth, N.S.	
Brooklyn, N.S.	
to	17
Mosherville, N.S.	
Clarkville, N.S.	
to	17½
Kennetcook, N.S.	
South Maitland, N.S.	
to	20½
Lower Truro, N.S.	
Mill Village, N.S.	
to	
Kingsport, N.S.	20
Billtown, N.S.	
to	
Grafton, N.S.	
Somerset, N.S.	
to	20½
Weston, N.S.	

S. J. McLEAN,
Assistant Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MAY, 1935

Railway accidents	170,	with 23 persons killed	and 149 injured
Railway accidents at highway crossings	16,	with 7 persons killed	and 16 injured
	186	30	165

	Killed	Injured
Passengers	1	17
Employees	2	113
Others	27	35
	30	165

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No of Accidents	
	Nova Scotia
1	Automobile—Driver failed to see or hear train. Licence N.S. 20599.
	Quebec
2	Automobile—Driver failed to stop for crossing. Que. licences H-288, H-24132.
	Ontario
4	Automobile—Drivers drove into side of train. Ont. licences FN-209, AJ-63, JU-38, ML-955.
2	Automobile—Drivers failed to see or hear train. Ont. licences JZ-402, NA-986.
1	Automobile—Driver failed to heed warning signals. Ont. licence EA-186.
1	Automobile—Driver failed to see flash light signal. Ont. licence AY-795.
1	Auto Truck—Truck driver failed to see or hear train. Ont. licence 53918-C.
1	Motor Cycle—Driver ran into side of train. Ont. licence 1124.
1	Pedestrian—Passed under lowered gates.
	British Columbia
1	Automobile—Stalled on crossing. B.C. licence 42653.
1	Auto Truck—Ran into side of train. B.C. licence 64036.

Of the sixteen accidents at highway crossings, seven occurred at protected crossings and nine at unprotected crossings. Thirteen (13) of the accidents occurred during the daylight hours and three at night.

DEC 4 1935

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXV Ottawa, September 15, 1935 No. 13

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Application of the Shuswap Lake Lumber Company, Limited, Canoe, B.C., for reduction in rates on lumber to points in Ontario.

File No. 26901.62.1

JUDGMENT

McLean, Assistant Chief Commissioner:

Under date of May 18, 1935, applicant applied for a rate of 72 cents on lumber, in carloads, from Canoe, B.C., to all points in the province of Ontario, setting out that the present rates are 83½ cents, 85 cents, and 87 cents; that the rate from Vancouver to the same points is 75 cents and applicant is located 322·1 miles east of Vancouver. All freight rates are stated herein in cents per 100 pounds.

Applicant stated that, effective June 2, 1935, the United States railways were establishing a 72-cent rate from Washington and Idaho to points east, including the province of Ontario, and it would "then be brought into direct competition with the highly modern plants being operated in those states, whom we must undersell in order to secure business." Regarding this statement, applicant is under some misunderstanding. The 72-cent rate referred to from points in Washington and Idaho was published to be effective June 10, 1935. This rate was not published to any destinations in Canada. In any event, the rate in question has been suspended by the Interstate Commerce Commission and is not in force.

Applicant also referred to the lumber industry in the interior of British Columbia now going through the most intense struggle in its history, stating that it was paying the highest wages and highest freight rate of any part of the Dominion. The reduced rates are desired to enable applicant to be placed on a fair competitive basis with the British Columbia coast mills.

The Canadian Pacific Railway (Canoe being a local point on that line) filed its reply on June 6, setting out the grounds upon which it contended the application should be refused and which are not repeated here, being covered by what is later stated herein. The matter was set down for hearing at a sittings of the Board in Revelstoke, B.C., on July 10. By letter dated June 26, the City Clerk of Revelstoke requested that, in the case of a reduction being made from

Canoe, it apply to the Revelstoke district as well. At the sittings, applicant was represented by its manager and the city of Revelstoke by its city clerk, the railway being also represented.

The submission of applicant at the hearing was an elaboration of the points already above set out. While applicant gave certain figures of the amounts paid to the railways for freight charges, as compared with its proceeds, for certain years, we are unable, from the data furnished, to determine the volume of lumber applicant has shipped to points in the province of Ontario for a period of some years past. It is a matter of common knowledge that the general depression has reduced building and other lumber-consuming operations to extremely low points, resulting in a low production level and low prices.

While also involving other points, the issue here and the position of the Board with respect thereto has been quite fully covered by two recent judgments of the Board concerning lumber rates from British Columbia to Eastern Canada, namely, judgment dated March 1, 1935, in the application of the Arrow Lakes Lumber Company, Limited, Nakusp, B.C., Volume 25, Board's Judgments and Orders, page 30, and judgment dated March 27, 1935, in the application of the Canadian Lumbermen's Association for an order of the Board disallowing competitive rail rates from British Columbia coast points to stations in Eastern Canada, Volume 25, Board's Judgments and Orders, page 75.

Briefly summarized, the situation on the record before the Board is:—

The normal rail rates on lumber from British Columbia coast points to Ontario are 88½ and 90 cents (with some exceptions west and north of North Bay). Effective May 17, 1934, expiring November 30, 1934, the railways established a competitive rate of 75 cents to meet water competition via the Panama canal. This competitive rate was again published effective March 15, 1935, to expire November 30, 1935.

The judgment of March 27, 1935, deals fully with the nature of the competition, the extent thereof, etc. This competitive situation does not exist with respect to lumber from interior British Columbia points.

The Railway Act has express provisions permitting the establishment of competitive rates which will not be subject to the long and short haul clause, i.e., that greater tolls shall not be charged for a shorter than for a longer distance over the same line in the same direction, and it has repeatedly been held by the Board that, subject to the provisions of the Act regarding unjust discrimination, the railways may publish reduced rates on traffic handled to meet coompetitive conditions without a corresponding reduction in normal rates where similar competitive conditions do not exist; further, that it is within the discretion of the railways to establish rates to meet water or market competition, but the Board is not empowered to direct their establishment or maintenance. See Volume 24, Board's Judgments and Orders, page 344 at page 350 *et seq*, for citations from numerous judgments of the Board bearing on such matters.

It is shown that for some years past the railways have seen the bulk of the British Columbia coast lumber traffic, which they formerly hauled all rail, diverted to the water route. In 1934, they established the competitive rail rates already referred to. It is shown that the freight cost via water to St. Lawrence river ports, plus the rail rate thence to various destinations throughout Ontario, produces lower through rates than the competitive rail rates. Clearly, therefore, the competition between British Columbia coast and interior mills, in so far as it is affected by freight costs, has been created by the water routes rather than by the railways. In the absence of publication of the competitive rates by the railways, applicant would have no grounds upon which to approach the Board, but it is not apparent that its position would thereby be in any way different from what it is to-day. The lower rates by unregulated transportation

agencies existed before competitive rates were published by the railways and it is not proven that the latter have subjected applicant to any detriment that did not exist, actually or potentially, prior to their publication. The railways cannot be charged with producing discrimination unless it can be demonstrated that it was created by their action and they could, by their own unaided acts, remove it. There is no such showing here.

While appreciating the applicant's position, the circumstances are such that the application, which is, in effect, that we should direct the publication of competitive rates, must be refused.

Ottawa, Ont., August 27, 1935.

Concurred in by Commissioners Norris and Stone.

ORDER No. 52193

In the matter of the application of the Shuswap Lake Lumber Company, Limited, Canoe, British Columbia, hereinafter called the "applicants," for reduction in rates on lumber, in carloads, from Canoe, B.C., to all points in the Province of Ontario.

File 26901.62.1

Thursday, the 29th day of August, A.D. 1935.

Hon. H. Guthrie, K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*
Hon. T. C. Norris, *Commissioner.*
G. A. Stone, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Revelstoke, July 10, 1935, the applicants and the Canadian Pacific Railway Company being represented at the hearing, the evidence offered and what was alleged, and considering as well the written submissions filed in support of the application and on behalf of the railway company,—

It is ordered: That the application be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

Application of Alberta Block Coal Company, Limited, and the Newcastle Coal Company, Limited, Drumheller, Alberta, for interpretation of the Demurrage Rules as the same may, or should, apply to applicants and their method of handling cars. File No. 1700.392.

JUDGMENT

McLean, Assistant Chief Commissioner.

The applicants' track situation may be roughly described as follows: both coal companies are served by a siding connected with the main line of the Canadian National Railways, which passes alongside and beyond the mine tipple. From this siding, other tracks diverge above the tipple, extending under the tipple and again joining the siding below the tipple. The sidings are leased by the railway to the applicants. The object of these short diverging tracks is to enable the loading of three or four cars with different kinds of coal at the same time, which is necessary under the method of operation of the mines in question, as, when lump coal, for instance, is being loaded, stove,

nut and slack coal is also going over the screens, so that, as stated by applicants (p. 2123) "you cannot load lump coal without loading all the others at the same time."

The method of ordering and switching cars for these companies is described in Exhibit No. 5 as follows:—

> "Between 16k and 17k each working day the Canadian National yard office staff call the different mines at Drumheller and ask for the out-turn of loads and requirements for the next day's loading. For example, on January 22, 1935, the Newcastle Coal and the A.B.C. mine placed the following order for empty equipment to be placed as given below:—

Newcastle Coal	*A.B.C.*
Lump—shove in	Lump—shove in
9 C.P. 30 1st out	2 C.P. 30 1st out
3 C.N. 30 next	1 C.N. dump next
Stove—behind part load	1 C.N. 30 next
2 C.N. 30 next	3 C.P. 30 next
Slack—C.N.	5 C.N. 30 next
1 C.N. dump	Shove empties now there back
Timber—behind part load	
2 C.N. 30	

> "Tracks are designated by the kind of coal loaded thereon. At the Newcastle mine nut coal is loaded on the timber track.
>
> "An engine is sent up to these mines and the outcoming loads are pulled and brought into the yard after 16k. An order is placed by telephone on the Canadian Pacific at Kneehill by 17k for fourteen 30-ton box cars to fill these orders. These empties are placed on the Kneehill transfer tracks by Canadian Pacific switch engine by 18k. Between 18k and 19k a Canadian National switch engine with thirteen C.N. box cars and two C.N. dumps, marshalled in order of requirement, is sent out from Drumheller yard, goes up switching lead, shoves C.N. empties required for the A.B.C. mine into their spur, proceeds up the switching lead to Kneehill transfer where it picks up the Canadian Pacific equipment required for the Newcastle mine and proceeds to spot it.
>
> "The first move is to pull the part load from the timber track, put two C.N. 30's ahead of it, and pushing up on to the timber track and spotting part load under chute and applying hand brakes to keep cars from running out.
>
> "The second move is to shove up C.N. dump on to slack track, spotting it under the chute and apply hand brakes.
>
> "The third move is to pull part load from stove track and get two C.N. 30's ahead, shove up, spotting the part load under the chute and set the hand brakes.
>
> "The fourth move is to line up 9 C.P. 30's next to the engine with 3 C.N. 30's on head end and push up lump track to tail track clear of switch to gauntlet track in front of car loader.
>
> "When this mine is spotted there is a car under the chute on the timber track with two empties immediately behind it, one dump under the slack chute, a car under the chute of the stove track with two empties immediately behind it and twelve empties immediately above the upper switch to the gauntlet track in front of the car loader.
>
> "At the Newcastle mine there is a power drum and cable under the car loader house and in cases where cars do not move of their own accord or with the help of the hand mover, they can be started and hauled by power.

"After spotting the Newcastle mine the switch engine takes the Canadian Pacific empties required for the A.B.C. mine from the Kneehill transfer to the A.B.C. spur, and at the junction of this spur with the switching lead, makes up the spot for that mine as follows:—

First—5 C.N. 30,
Then 3 C.P. 30,
" 1 C.N. 30,
" 1 C.N. dump,
" 2 C.P. 30 first out.

"This string of cars is then pushed up the spur, up the lump track, to the tail track clear of the last switch above the tipple and sufficient hand brakes applied to keep cars from running out. Any empties that may be above the loader on the lump track are pushed back up the tail track ahead of the set up.

"The grade on which the A.B.C. mine tracks are laid is not as steep as that at the Newcastle and the tipple of the A.B.C. mine is in a slight dip which makes it necessary to pull cars from the tipple to about the lower switch to the lump track before they will move on their own accord after loading.

"The reason the A.B.C. mine is not spotted the same as the Newcastle mine; i.e., spots on the different small coal tracks, is that about a year ago a Canadian National yard engine was derailed on the slack track due to curvature and the mine company, rather than go to the expense of altering the tracks or paying the cost of rerailing engines, made arrangements to spot the small coal tracks themselves by running cars down from the tail track after they were marshalled and spotted in accordance with the mine lineup."

Subject to the more specific spotting of cars on the Newcastle Coal Company's tracks, as above set out, the situation, generally, is that cars are placed on the long siding above the tipple, marshalled in the order required by the coal companies, who, by means of steam hoists and wire cable, or steam winding-drums and steel ropes, pull them down as required on the diverging tracks under the tipple and then, when loaded, the coal company moves them to the long siding below the tipple, from which point they are switched out by the railway at the close of the day's operations. According to the record, all that the coal companies are in a position to do is to pull the cars down from the siding above the tipple over the diverging tracks and to the siding below the tipple. They are not in a position to haul the loaded cars back above the tipple to the location at which they were originally placed by the railway switch engine (although this is unnecessary under the method of handling here); nor are they in a position to marshall the cars above the tipple in any different order or arrangement on the siding from the position in which placed thereon by the railway. Their requirements, consequently, necessitate the marshalling of the cars by the railway in the manner directed by the coal companies, as already described herein, before they are placed on the siding.

Applicants state that they do not exceed twenty minutes in the loading of a car and load 30 to 35 cars per day during peak output. They state that car detention and assessment of demurrage is brought about by reason of the fact that the loading on the different tracks under the tipple does not come out even and, at the close of the day, they have some part loads there and, if the mine does not operate the next day, the free time is exceeded and demurrage accrues. Another condition experienced is that, under their method of loading different kinds of coal at the same time, they may have some coal on hand for which they have no orders and demurrage accrues before the cars are billed out. They state that these conditions cannot be avoided under their method

of operation. It appears from the record that some other mines have storage bins in which they place coal not required for immediate loading and shipment, but applicants have not such facilities.

Canadian Car Demurrage Rule No. 3 provides 48 hours (2 days) free time (exclusive of Sundays and legal holidays) for loading and the Canadian Car Demurrage Bureau applies this rule with respect to the applicants. There is an exception to this rule reading:—

> "Manufacturers, lumbermen, miners, contractors and others, who have their own motive power and handle cars for themselves or others, shall be granted an additional allowance of the time necessary for them to do the switching from and to the designated interchange tracks, but not to exceed twenty-four hours."

Applicants stress that cars are not loaded on the long siding (although. from the plans filed, it is not clear that cars are not loaded on this siding at point of passing tipple); that they are taken off the said siding by the power of the coal companies and, after loading, returned to it, although at another point thereon. They contend, therefore, that this long siding is an interchange track within the meaning of the exception above quoted, consequently, entitling them to an adidtional 24 hours free time. With this contention I cannot agree. The switching service performed by the railway on these sidings is as complete as the facilities of the companies and their method of operation permit of. It is of the same character as that performed throughout the country on a great many sidings where similar conditions exist. Sidings where the switching operation performed by the railway is of the character here described, have, in no case, been treated, or considered, as interchange tracks. An interchange track, within the intent of the exception referred to and in accordance with its interpretation ever since the rule was published some twenty years ago, covers only those cases where the railway places cars, loaded or empty, on a designated interchange track and the manufacturers, miners, etc., by their own motive power, can move the cars at will and as desired between said interchange track and all points of loading or unloading on the tracks within their premises. The railway, in such cases, performs no switching service beyond merely placing the cars on the interchange track and removing them therefrom and no special marshalling in desired order is necessary prior to placing the cars on the interchange track, such as is here involved for the reason that the coal companies are quite restricted with respect to the movements they can perform with their motive power. The situation here existing is that, at the actual loading point on the companies' sidings, there is capacity for but one car at a time, but, as they at times load as many as 30 to 35 cars per day, obviously, this can only be accomplished by the applicants providing themselves with sufficient trackage to enable a considerable number of cars to be placed above the tipple and by their also providing themselves with facilities for moving cars down to the loading point, as required, and subsequently to the siding below tipple. Such trackage is a necessary part of their private siding facilities. It is not properly described as an interchange track. A similar situation exists at a great many points. Citing merely one example, grain elevators and milling companies are equipped with cables for pulling cars under elevator spouts or over unloading bins and, frequently, only one car can be placed at the actual loading or unloading point at one time. It is only the inadequacy of the shipper's or consignee's loading or unloading facilities that prevents more cars being placed thereon when switching on the siding is performed by the railway, and, if the railway only switched to and placed on the siding the cars which could be actually worked on, the parties in question would not be able to satisfactorily carry on their operations. Frequently, a milling company having only actual unloading accommodation for one car at a time, unloads a large number of cars, follow-

ing one switching service performed by the railway, by moving them with a cable.

Applicants referred to Demurrage Rule No. 7 (a), reading:—

> "'Actual Placement' is made when a car is placed in a reasonably accessible position for loading or unloading."

and questioned the right of the railway to consider cars placed in a reasonably accessible position for loading when, in fact, they were on a siding some distance above the tipple, or actual loading point. Under circumstances such as have been above described as existing at these mines and many other points, when the inadequacy of shipper's or consignee's facilities permit the placing of but one car at the loading or unloading point and they require several cars there during the day's operations, when cars are placed on the siding so that they can be moved to loading or unloading point at the convenience of the shipper or consignee it is considered that they have been placed in a reasonably accessible position for loading or unloading within the provisions of Demurrage Rule No. 7 (a).

Reference was made by applicants to a case brought before the Board by the Gutta Percha and Rubber, Limited, Toronto, in 1929, and it was stated (p. 2126) "it is practicaly exactly the same." I have reviewed the file in that case. The interchange track there in question comes clearly within the definition of the intent of the exception as above set out. The Gutta Percha and Rubber, Limited, do all the moving of loaded and empty cars to and from the interchange track and the railway performs no switching service on their sidings. The only point there involved was a definition of the term "motive power." That of the Gutta Percha and Rubber, Limited, consisted of an electrically operated winding drum with a series of blocks and steel cable. The Board ruled that the term "motive power" would include such device. Here, there is not brought in issue the use of the applicants' motive power; the question is whether the long siding comes within the definition of an interchange track.

For the reasons above given and considering the whole nature of the mine operation and the switching performed by the railway, and which is not at all of the character involved in the case of the Gutta Percha and Rubber, Limited, I do not consider the applicants have brought themselves within the provisions of the exception to Demurrage Rule No. 3.

Another feature of the application deals with the question of computing free time on cars placed on applicants' sidings for loading. The Canadian Car Demurrage Bureau states that applicants are allowed the full free time stipulated by Demurrage Rule No. 4 (*a*), namely, that "on cars held for loading, time shall be computed from the first 7 a.m. after placement until loading is completed and proper billing instructions are furnished." With respect to Canadian National Railways' equipment, it is shown that the railway maintains a supply of empty cars on the siding above the tipple to be readily available as required by the coal companies and the free time is computed from the first 7 a.m. after such cars are moved down under the tipple. There is no controversy concerning these cars.

So far as relates to foreign cars or Canadian Pacific Railway equipment, applicants are required to state the number of cars wanted and the date wanted. This equipment is requested from the connecting line and placed and made available before 7 a.m. of the date required; 48 hours free time being allowed, computed from the first 7 a.m. after placement. The applicants have specified, in their orders for empty foreign cars, 8 a.m. as the hour cars are required and dispute the railway's right to compute the free time from the first 7 a.m. after placement, on the grounds that inasmuch as the foreign cars are ordered

for 8 a.m., the free time should be computed from the second 7 a.m. following the placement of cars. They seek a ruling that when cars are ordered for 8 a.m. and the railway places the cars before the time specified, cars so placed should be deemed, for the purpose of computing free time, as having been placed at the time for which they are ordered. Applicants state that their mining operations do not commence until 8 a.m. The ruling sought by applicants would be contrary to the construction which has always been placed on the demurrage rule in question, as well as opposed to the literal reading thereof. If a shipper orders cars for a particular hour, it means that he requires that they should be available for loading at the hour named, but such order does not obligate the railway to place them at that particular hour, as the shipper cannot control the switching operations of the railway. The railway does not violate any duty it owes to the shipper in placing cars before 7 a.m., and when cars are placed for loading before 7 a.m. on the date specified, the demurrage rule distinctly provides that "time shall be computed from the first 7 a.m. after placement." In this connection, reference may be made to what is stated in Volume 24, Board's Judgments and Orders, p. 241. Any other interpretation of the rule would enable shippers, by designating 8 a.m. as the hour cars are required, to circumvent the rule and secure substantially an additional 24 hours free time, or 72 hours free time in all, although the rule only provides for 48 hours free time. With respect to private siding deliveries, probably in the majority of cases, loaded cars for unloading on such tracks, as well as empty cars for loading, are placed before 7 a.m. and the free time then commences. In a great many instances, such placing best suits the requirements of shippers and consignees by avoiding interruption and loss of time during their day's operations and, in some cases, there are city ordinances prohibiting switching operations across certain streets except during the night, an instance being the so-called Princess street Spur in Winnipeg, which serves a large number of warehouses, and cars required by such firms at 8 a.m. or any other hour of a given date, must be placed before 7 a.m. if they are to be available on the date ordered.

Summarizing, under applicants' method of handling cars, as herein described:—

(1) They have not brought themselves within the provisions of exception to Demurrage Rule No. 3.

(2) When cars are placed on siding so that they can be moved to loading point at the convenience of shippers, it is considered that they have been placed in a reasonably accessible position for loading within the provisions of Demurrage Rule No. 7 (*a*).

(3) When cars are placed for loading before 7 a.m. on the date specified, free time, under Demurrage Rule No. 4 (*a*), commences from the first 7 a.m. after placement.

Inasmuch as the Canadian Car Demurrage Bureau is applying the rules in accordance with the foregoing summary, no direction in the matter is necessary.

Ottawa, Ontario, August 27, 1935.

Concurred in by Commissioners Norris and Stone.

ORDER No. 52195

In the matter of the application of Alberta Block Coal Company, Limited, and the Newcastle Coal Company, Limited, Drumheller, Alberta, hereinafter called the "applicants," for interpretation of the Demurrage Rules as the same may, or should, apply to applicants and their method of handling cars.

File No. 1700.392

THURSDAY, the 29th day of August, A.D. 1935.

Hon. H. GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Calgary on the 9th day of July, 1935, the applicants and the Canadian Car Demurrage Bureau being represented at the hearing, the evidence offered and what was alleged, and considering the written submissions filed on behalf of the parties and applicants' method of handling cars,—

It is declared as follows:

1. The applicants have not brought themselves within the provisions of exception to Demurrage Rule No. 3.

2. When cars are placed on siding so that they can be moved to loading point at the convenience of shippers, it is considered that they have been placed in a reasonably accessible position for loading within the provisions of Demurrage Rule No. 7 (*a*).

3. When cars are placed for loading before 7 a.m. on the date specified, free time, under Demurrage Rule No. 4 (*a*), commences from the first 7 a.m. after placement.

H. GUTHRIE,
Chief Commissioner.

Application of the Residents of the District surrounding St. Paul and Heinsburg, Alberta, and intermediate points on the Coronado Subdivision of the Canadian National Railways for reduction in the rates on Grain, carloads, to the Head of the Lakes.

File No. 30686.23

JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER

The Coronado Subdivision of the Canadian National Railways runs easterly from Edmonton, its present terminus being Heinsburg, approximately 160 miles from Edmonton; St. Paul is approximately 120 miles from Edmonton. The rates on grain to the head of the lakes from points St. Paul to Heinsburg, inclusive, are here in issue.

There is another branch line of the railway running northwesterly from North Battleford, Sask., the present terminus of which is Frenchman Butte, Sask. The applicants state the railway holds a charter to complete the gap between these two termini, a distance of approximately 40 miles, but, at the present time, with respect to the movement of grain to the head of the lakes, it is pointed out that it must be hauled approximately 160 miles westerly to Edmonton before proceeding eastward to Fort William; in other words, applicants state the grain must be hauled an additional 320 miles because this gap is not completed.

The points above mentioned are north of the North Saskatchewan river. South of the river is a line of the Canadian Pacific Railway with a continuous route eastward to the head of the lakes, so that no back haul is involved as in the case of the Coronado Subdivision of the Canadian National Railways. The rates in force on grain from prairie territory being governed by the distance of actual haul under mileage groupings, it consequently follows that the rates from the Canadian Pacific Railway line in question to the head of the lakes are, due to lesser mileage, lower than from the Canadian National Railways points in issue. The distances and rates to Fort William and Vancouver are shown below:—

From	To Fort William, Ont.		To Vancouver, B.C.	
	Miles	Rates in Cents per 100 pounds	Miles	Rates in Cents per 100 pounds
Canadian National Railways				
St. Paul, Alta.	1347.6	29	888.5	22
Edouardville, Alta.	1356.8	30	897.7	22
Armistice, Alta.	1361.6	30	902.5	22
Elk Point, Alta.	1367.0	30	907.9	22
Muriel, Alta.	1370.4	30	911.3	22
Lindbergh, Alta.	1377.0	31	917.9	22
Middle Creek, Alta.	1382.1	31	923.0	22
Heinsburg, Alta.	1387.6	31	928.5	23
Canadian Pacific Railway				
Hairy Hill, Alta.	1202.2	26	909.8	24
Kaleland, Alta.	1196.9	26	915.1	24
Two Hills, Alta.	1191.7	26	920.3	24
Musidora, Alta.	1184.9	25	927.1	24
Morecambe, Alta.	1179.6	25	932.4	24
Beauvallon, Alta.	1175.5	25	936.5	24
Myrnam, Alta.	1169.1	25	942.9	24
Slawa, Alta.	1164.5	25	947.5	24
Derwent, Alta.	1156.6	25	955.4	24
Rusylvia, Alta.	1150.6	25	961.4	24
Clandonald, Alta.	1144.4	25	967.6	24
Dewberry, Alta.	1135.4	25	976.6	24
Hazeldine, Alta.	1132.0	25	980.0	24
Marwayne, Alta.	1125.2	25	986.8	24

According to the applicants' statements, the distance across country between the Canadian National Railways' and the Canadian Pacific Railway's lines is, roughly, 25 miles. Evidence of a more or less general character was given by elevator operators and farmers in the district, which may be briefly summarized. It is alleged that, by reason of the rate differences from across-country points on these lines, the elevators located on the Canadian Pacific Railway are able to pay higher prices for grain shipped therefrom, ranging, at times, from 2 to 3 cents per bushel; that, to obtain such higher prices, farmers who ordinarily would ship or sell grain at Canadian National Railways points, haul their grain to, and ship from, points on the Canadian Pacific Railway; that farmers who ship from Canadian National Railways points are penalized by the higher rates, because, by reason thereof, they receive a lower price for their grain than shippers at the Canadian Pacific Railway points; that merchants at the Canadian National Railways points lose business, because the farmers make purchases at the point where they market their grain.

The application, therefore, is "that the rates on grain shipped to Fort William on the Canadian National Railways from the points above mentioned should be reduced to compare favourably with those existing on the Canadian Pacific Railway at the points mentioned above; the same to apply until such time as the gap between Heinsburg and Frenchman Butte is completed."

With regard to prices paid for grain, the situation, roughly stated, is that these are based either on Vancouver or Fort William prices—whichever market is more favourable—and the farmer is paid these prices less the freight rate from shipping point. It consequently follows that, at a given price at Fort

William, the farmer with a short haul and, say a 15 cent, freight rate, obtains a considerably higher price than the farmer with a long haul and a 26 or 30 cent freight rate.

The differences in the freight rates from the points here in question to Vancouver and Fort William are already set out herein. It would appear that, for the most part, the Vancouver market is the more favourable one with respect to these shipping points, as data furnished, covering shipments for a number of crop years, show that, by far, the greater bulk of the grain goes to Vancouver. However, according to the evidence, at times certain grades of grain command a sufficiently higher price at Fort William to make it more attractive, from a price standpoint, to ship there. It was stated that, during the crop year 1934-35, an unusual demand for certain grades of wheat in the United States created a market condition attracting grain to Fort William. On the other hand, it was stated by an elevator operator at Armistice that, for some considerable time past, the Vancouver price on another grade of wheat resulted in the farmers receiving higher prices at these Canadian National Railways shipping points than were paid at shipping points on the Canadian Pacific Railway. The position of the shippers at these Canadian National Railways points is the same as that of those at all other points of the same distance from Fort William who pay the same rates and it is somewhat better than the position of shippers at greater distances with still higher rates, for example, for further distant points on the Northern Alberta Railways. The shippers at the points here in question have, in fact, an advantage over those at many points, because here there is another line of railway to which grain can be drawn and a lower rate obtained if the market and price condition makes it sufficiently attractive to do so, while others have no alternative line with a lesser mileage and lower rates to which they can deliver their grain.

It has been held and stated many times in decisions of the Board that: (1) rate-regulating commissions have no right whatever to attempt to prescribe rates to equalize geographic conditions so as to overcome geographical disadvantages of location; (2) that, so far as concerns competition—water, carrier, or market—the extent to which this may be met is in the discretion of the railway, subject to the provisions of the Act regarding discrimination, but that the Board has no power to direct, or compel, the railways to put in, or maintain, rates to meet competition.

With regard to the feature of applicants' submissions that the rates should be based on what they would be as a result of the shorter mileage if the gap between Heinsburg and Frenchman Butte were constructed, one of applicants' witnesses stated that some years ago there had been a similar condition, not in connection with grain, but with respect to coal, in the case of a non-completed gap between Manyberries and Altawan on the Canadian Pacific Railway line from Stirling to Weyburn and it was his belief that the Board had ruled that the Canadian Pacific Railway should establish the rates that would be available, on completion of the gap, by reason of the shorter mileage from the Lethbridge District coal fields to points east of Altawan, consequently, there was a precedent for what is here applied for.

In the case referred to, the application of the Associated Boards of Trade and the Saskatchewan Grain Growers' Association was of the character above described, namely, that rates should be directed as though the gap were completed. The gap was 37 miles and the application was, in effect, for an order of the Board directing the railway to apply, via a route extending from 671 to 781 miles, the rates that would properly apply to a mileage of from 234 to 415 miles. The application was heard at sittings of the Board in Regina on March 1, 1919, and was dismissed by Order No. 29230, dated January 2, 1920. A letter was written to the applicants in that case on January 2, 1920, in which the Board stated it had no jurisdiction in the matter of ordering, or compelling, the con-

struction of railway lines, consequently, any action by the Board compelling the railway to complete the line was impossible. The letter in question further stated:—

> "I am further directed to state the Board has jurisdiction over freight rates, but is convinced that Parliament in giving it such jurisdiction, never intended that it should be used as a means of indirectly compelling a railway company to do anything which the Board lacked the power to directly order it to do. Under these circumstances the Board cannot see its way to order any reduction in the rates now in force, established as these are on the usual mileage basis."

Reference may also be made to the complaint of J. B. Stringer and Company, Chatham, Ont., concerning the rate charged on corn, based on the Canadian National Railways mileage via London and St. Marys, whereas they claimed the lower mileage via Hyde Park and Lucan Crossing should be used. The Board found that, while the lines of the railway crossed at Lucan Crossing, they did so at different levels; that there was no physical connection between them and the cost of constructing a transfer at that point would not be justified by the traffic offering. The Board there ruled that it is given no power under the Railway Act to compel a railway to accept a rate not based on the actual mileage over which the traffic moves, consequently, direction could not be given that the rate should be figured on the mileage via Lucan Crossing. There have been other cases before us of like character and similarly dealt with. Of course, there are many instances where the railway route between two given points is unduly circuitous rather than via the most direct route and it might similarly be argued that the rate should be computed on what the direct mileage would give. There are a number of other branch lines in prairie territory involving a back-haul with respect to the movement of grain eastward to the head of the lakes. As already stated, rates are based on the actual distance hauled and any departure therefrom would create complications and discrepancies and, undoubtedly, lead to complaints of discrimination.

The application must be refused.

Ottawa, Ont., August 27, 1935.

Concurred in by Commissioners Norris and Stone.

ORDER No. 52203

In the matter of the application of the residents of the district surrounding St. Paul and Heinsburg, and intermediate points, in the Province of Alberta, hereinafter called the "applicants," on the Coronado Subdivision of the Canadian National Railways for reduction in the rates on grain, carloads, to the head of the lakes.

File No. 30686.23

Thursday, the 29th day of August, A.D. 1935.

Hon. H. Guthrie, K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*
Hon. T. C. Norris, *Commissioner.*
G. A. Stone, *Commissioner.*

Upon hearing the application at the sittings of the Board held at St. Paul, July 4, 1935, the applicants and the Canadian National Railways being represented at the hearing, the evidence offered and what was alleged, and considering as well the written submissions filed in support of the application and on behalf of the railway company,—

It is ordered: That the application be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

Application of the Canadian National Railways for an Order granting leave to abandon the operation of its Elgin and Havelock Subdivisions, in the Province of New Brunswick, between Elgin (Mile 13·8) and Petitcodiac (Mile 0·0); and between Petitcodiac (Mile 0·0) and Havelock (Mile 12·3)—a total distance of 26·1 miles.

File 39310.2

JUDGMENT

Commissioner Stone:

Under section 165A of the Railway Act, section 2, subsection 3 of the Canadian National-Canadian Pacific Act, 1933, and all other appropriate statutory provisions, the Canadian National Railways made application for an order granting it leave to abandon the operation of that portion of its line, known as the Elgin and Havelock subdivision in New Brunswick, extending north from Petitcodiac to Havelock 12·3 miles and south from Petitcodiac to Elgin 13·8, a total distance of 26·1 miles.

In support of this application, statements were submitted setting forth a general description of the line, its special industrial relationships, its revenue and expenditures for the year October, 1930, to September, 1931, and the calendar year 1933, together with a map of the territory, and an analysis of its traffic for the same years.

Subsequent to the receipt of this application, the municipalities and other interests concerned were requested to file their submissions, and the application was then referred to the Board's Engineering and Operating Departments for inspection and report. Afterwards the case was heard at Petitcodiac on May 1, 1935, when additional presentations were made by counsel for the applicant, counsel for the province of New Brunswick, supplemented by representations from the Maritime Board of Trade, Saint John Board of Trade, Lumbering, Farming, Dairying, Industrial, and other various interests affected.

Counsel for the applicant stated that:—

> "This line passes through fairly well settled territory. Agriculture forms the principal industry on the northern section, while lumbering is carried on along the southern or Elgin section. Excellent gravel-surfaced highways parallel the railway which experiences intensive competition from motor vehicles during the open season."

The distances in the event of abandonment, from the nearest railway station were shown as follows:—

	Miles
Elgin	11.0
Pollett River	7.0
Intervale	3.0
Fawcett	5.2
Killam	8.5
Steeves	9.0
Havelock	9.5

Mixed train service was operated over this line for five days a week between October 1, 1930, and April 26, 1931, and reduced to three days a week between April 27, 1931, and September 30, 1931. The time-table in effect June 24, 1934, showed a further reduction in the service to two days a week.

Statements filed with the Board in regard to receipts, expenditures, and operating losses to the system are summarized below, together with number of cars handled; and average maintenance charges 1928-1935.

Total revenues accruing to:—

	Branch Line	Balance of System	Total
Oct. 1, 1930, to Sept. 30, 1931	$ 6,814	$30,584	$37,398
Year:			
1933	3,022	17,984	21,006
1934	....	....	22,513

Total expenditures incurred to:—

	Branch Line	Balance of System	Total
Oct, 1, 1930, to Sept. 30, 1931..	$36,936	$14,578	$51,514
Year:			
1933..	28,202	8,721	36,923
1934..	....	....	33,727

System loss from operation:—

Oct. 1, 1930 to Sept. 30, 1931..	$14,117
Year:	
1933..	15,916
1934..	11,214

Statement of car movements on branch line:—

	In	Out	Total
Oct. 1, 1930 to Sept. 30, 1931..	95	219	314
Year:			
1933..	29	279	308
1934..	47	189	236

Actual maintenance cost on branch line:—

1928..	$ 25,345
1929..	25,494
1930..	27,495
1931..	23,632
1932..	13,037
1933..	15,600
	$130,603

Yearly average, $21,767.

The out of pocket expenses on the branch line proper were shown as greater than the net loss to the system, and Counsel explained the operating loss was substantial, but the "question is whether or not the loss is offset by the public and private inconvenience and detriment should the railway operation be abandoned." Vol. 619-620, page 492.

He further stated that this branch line is split where it crosses the main line at Petitcodiac a maximum distance of 12 miles from each end, highways are good, and country facilitates easy use, no serious hills, and the situation is not to any degree as serious as indicated, also that there is no serious commercial or business difficulty in obtaining other means of carriage for lumber. As respects the service to the community, there is no doubt that during the winter months when the roads are not open for truck, bus and automobile traffic, some inconvenience and discomfort will be experienced. Vol. 619-620, page 493.

> "We have four or five months in the year in which it will be a hardship on the public to be deprived of the railway service, there is no question of that. We do not attempt to blink that fact. That is a form and measure of public inconvenience which must be balanced against the financial results of these branches." Vol. 619-620, pages 561-562.

Counsel for the province submitted oral evidence, examined numerous witnesses, and filed several exhibits in opposition to the railway's application.

The brief submitted on behalf of the province of New Brunswick and filed as Exhibit No. 1 emphasized the position taken by the provincial Government on the railways' application from which the following extracts are quoted:—

> "The initial steps, leading to the construction of the branch, were taken shortly after Confederation—in 1874 to be exact. In that year the Petitcodiac and Elgin Branch Railway Company was incorporated (*Acts of Assembly 1874, c. 74*). In the same year (*Acts of Assembly 1874, c. 8*) an Act was passed authorizing the province of New Brunswick to subsidize the construction (inter alia) of a railway connection Petitcodiac (in the parish of Salisbury and county of Westmorland) with Elgin (in the parish

of Elgin and county of Albert). The province of New Brunswick did, in fact, subsidize the railway to the extent of $37,000 (Exhibit "A"). Furthermore, under the authority of *Acts of Assembly 1875, c. 85,* the parish of Elgin contributed to the construction of the branch to the extent of $13,000, or at the rate of $1,000 per mile.

"In 1878 authority was given the company to extend the line from Petitcodiac to Havelock (in the parish of Havelock and county of Kings). (*Acts of Assembly 1878, c. 101*). The line thus authorized extended from Elgin to Petitcodiac (where it intersected what was then the European and North American Railway), a distance of 13·8 miles, and thence from Petitcodiac to Havelock, a distance of 12·3 miles.

"The Provincial Legislature sanctioned various extensions of time (*Acts of Assembly 1879, c. 24; 1882, c. 40; 1884, 32*), and the railway was finally completed about 1889. (Exhibit "B".) See in general Order in Council dated August 3, 1920 (Exhibit "C").

"The Havelock-Petitcodiac end of the line seems to have been financed by bank loan under the authority of *Acts of Assembly 1885, c. 54 and c. 60.*

"The original company, it must be conceded, did not prosper and in 1890 it suspended payment of interest on its bonds, going into a receivership as a consequence.

"The assets of the company were acquired by one C. R. Baring Young (as appears in the recital of a Dominion Act) (*1894, 57-58 V, c. 72*), and were by him transferred to a Dominion company, "The Elgin & Havelock Railway Company."

"The railway was in 1894 declared to be a work for the general advantage of Canada (*1894, 57-58 V, c. 72, s. 2*) (*Dom.*).

"Finally under agreement between the Railway Company and the Minister of Railways and Canals, dated January 31, 1919, the railway was purchased by the Canadian Government Railway System for thirty thousand dollars ($30,000) together with a release to the Elgin & Havelock Railway Company from all claims of the said system against the company as of June 1, 1918, amounting to six thousand eight hundred and sixty dollars ($6,860) (Exhibit "B"). In 1923 the branch became a part of the Canadian National Railway System.

"The parishes of Elgin and Havelock have a combined population of almost 3,000 persons (Exhibit "D"). The parish of Salisbury has a population of 3,542 persons. Even though the main line goes through Petitcodiac in the parish of Salisbury, it is nevertheless reasonable to assume that at least 500 persons in the parish of Salisbury are benefited by the Elgin branch. The population figure used therefore will be 3,500 persons.

"It is not probable that the owners of the various trucks which serve the community, operate for profit. It is even more improbable that they could make a profit if they complied with the Motor Carrier Act. No franchise for either freight or passengers is in existence. Strictly speaking every operator who accepts compensation for transporting freight or passengers in the district does so illegally. Doubtless the insurance requirements of the Motor Carrier Board, together with the tax of two per cent (2%) on gross receipts, would make it impossible for most of these truck owners to continue to operate.

"Yet, if information were laid against them they would be fined. If injunction were sought, they would be enjoined. They would have the alternative of applying to the Board for a franchise which they could not afford, or of ceasing to operate.

"Now it may with force be said that these trucks are in fact operating and that no one is likely to apply for an injunction.

"The province wishes to call attention, in that connection, to the announced policy of the Motor Carrier Board. The following resolution was passed in 1932:—

'No passenger or freight service franchises will be issued in districts which the Board feels are already being satisfactorily served by the railways. This policy has been adopted by the Board as a means to aid the railways. Franchises already granted will not be affected by the ruling which will apply only to future applications. Districts most likely to be affected are the Moncton-Nova Scotia Border route and the Campbellton-Bathurst section. These points are being served by oil electric trains and as long as these services are continued no motor franchise will be granted. It is especially railway passenger traffic that we are trying to aid in this co-operation with the railways. It is understood that Premier Taschereau issued a similar order a short time ago.

'No franchise will be granted either for passenger or freight service unless the public demand warrants such. Many applications have been received but have been turned down because residents of the districts affected had made no request for the proposed services.

'Franchises will not be issued to non-residents when residents of New Brunswick are able to render the service.' (*Exhibit "K" at page 65.*)

"The Board has adhered to this policy. It is fair to assume that, if adequate service were furnished by the railway, no motor carrier franchise would be granted by the Board. It may also be assumed that, on the application of the Railway, under such circumstances, the Board (under *Acts of Assembly 1930, c. 22, s. 2*) would grant permission to prosecute persons operating without a franchise.

"It is submitted, even further, that coincidently with the improvement of railway service, the motor carrier situation would be largely relieved. As before suggested, the railway situation is more cause than effect of the motor carrier situation. If, however, better railway service did not automatically effect a cure, the legal remedy would be available."

In this same exhibit reference was made to the richness of the soil, the quantity of lumber available. It alleges that by the abandonment of this line, not only would the villages of Elgin, Havelock and Forest Glen be injuriously affected but that they, and the entire parishes of Elgin (Albert county) and Havelock (Kings county) would be practically ruined financially. Neither of the above named parishes is served by any other railway than the branch under consideration. The communities have grown, new settlers have moved in, relying upon continued railway service, extensive lumber operations are being carried on, farm products are exported and supplies imported—in general, business and other communications are being maintained by about 3,000 people with an outside world that would be practically cut off. That the line was built due to the efforts of an enterprising community, which half a century ago, contributed substantially to its cost, and that the per capita expenditure of the Canadian National Railways incurred in connection with this branch from 1923-1931, both inclusive, was less than the per capita expenditure for Canada as a whole.

That the policy of running only two trains per week, one way, left the door open to motor carrier competition, and that the perishable nature of much of the produce of the community makes it essential during the warmer months to transport more frequently than is possible by railway.

Those who appeared on behalf of the farming and dairy interests contended that the regions served by this line of railway are particularly fertile, and among the best dairy centres of the province of New Brunswick. That the provincial

Government gave financial aid to certain creameries established in the principal centres, and with that assistance the dairy business was gradually developing. To these creameries the farmers trucked their cream in summer and forwarded it by rail during the winter. Quick despatch was essential both in the warm weather to prevent cream spoiling, and in the winter weather to prevent freezing. The cream being used for the manufacture of butter for the English market had to be of a high-grade quality.

Maple sugar was manufactured the latter part of March or early in April. This commodity had to be placed on the market early, and this business meant to the farmers in Elgin parish approximately $15,000 each season. It was estimated 77,000 Rock or Sugar Maple trees were in the district.

People who resided south of Elgin and north of Havelock were served through those centres. There was no other railway between the main line and the bay of Fundy, approximately 35 miles, and the back districts would be depopulated on account of being too far from a railway. The highways were not paved, but of dirt formation, some with gravelled surface. On account of prevailing winds and snow conditions, the highways cannot be kept open. When the frost is coming out of the ground, to protect the road surface orders are issued by direction of the Minister of Public Works for the closing or reopening of the highways, the period of time varying with weather conditions. It was contended that with such a situation confronting the inhabitants of the districts, for every $100 saved to the railway, the people of the community would lose $10,000 or more, as it is impracticable for the people to get out by highway during the winter months. In case of sickness or injury, the nearest medical doctor resided at Petitcodiac, and the nearest hospital at Moncton.

The Government have been spending large sums of money through the Farm Loan Board, and the Soldiers' Settlement Board, in establishing people on farms. Exhibit No. 6 states that during recent years

> "Twenty-five immigrant families have taken up farm lands in this district, investing all their means. They were induced to settle in this country by the railways and governments advertising railway service was available."

From Havelock considerable cattle are sent to available markets, 10,000 carcasses of pork, and 1,000 of cattle were slaughtered in this district last year.

The Sayer Lumber Company's manager stated that this company commenced lumber operations at Pollet river in 1928. The lumber lands had been properly cruised and they hoped to continue cutting in that district for a good many years. That they employed between 40 and 50 men, but if the railway was discontinued, they would have to close their mill under present prices obtained for lumber. Exhibit 1 shows this firm shipped by rail an average per year of 155 to 160 cars of lumber and laths. That the mill for five years previous to 1928 was idle. The lumber manufactured by this company at Pollett River, N.B., is shown in the following table:—

LUMBER MANUFACTURED BY F. E. SAYRE AT POLLET RIVER, N.B.

Year	Lumber feet	Lath pieces
1928	2,360,000	1,809,000
1929	3,358,000	2,648,000
1930	3,315,000	1,915,000
1931	2,183,000	1,151,000
1932	2,011,000	1,382,000
1933	1,547,000	1,065,000
1934	2,290,000	1,208,000
	17,064,000	11,178,000

Another lumber operator stated this was the first year he sold lumber in Ontario which in freight charges meant from $17,000 to $18,000 to the railway;

that he had 1,275,000 feet sawed and about 300,000 already cut to saw, but if this line was abandoned, the longer haul by road would make the business unprofitable at prevailing prices, and it would be impossible to do business.

It was further stated that within a radius of 20 miles from Havelock there was approximately ten million feet of hardwood and hemlock which cannot be stream-driven and has to be shipped out by rail.

Mr. White raised the question of the jurisdiction of the Board to deal with the application, on the ground, shortly stated, that s. 145 of the British North America Act provided for the construction and continued maintenance of the Intercolonial railway, of which the Elgin and Havelock and the Hampton and St. Martins now form a part, as a sine qua non upon which confederation was founded, and that therefore, it was beyond the competence of Parliament to enact legislation which would enable the Board to override that section. In other words his objection is as to the validity of the legislation under which the Board is asked to exercise its powers in this case.

In view of former rulings of the Board, in cases where the constitutional question was involved, that it was not the function of the Board to pass upon the constitutionality or validity of legislation, whether Dominion or provincial (Auger *et al* v. G.T. & C.P. Ry. Cas., 19 C.R.C. 401 at p. 403, and Bell Telephone Co. v. City of Ottawa, 22 C.R.C. 421 at p. 425), it is unnecessary to decide the point.

The amendment to the Railway Act (chapter 47, 23-24 George V), which became effective May 23, 1933, as section 165A, provides that:—

> "A company may abandon the operation of any line of railway with the approval of the Board, and no company shall abandon the operation of any line of railway without such approval."

The question whether abandonment of operation shall be allowed must be determined by the circumstances in each case. Municipality of Archie *et al* v. C.P.R. Co., 41 C.R.C. 387, and Brandon, Saskatchewan and Hudson Bay Railway Company v. Morden *et al,* 43 C.R.C. 188.

No statements of receipts and expenditures, prior to the test period, or for the year 1932 were furnished the Board. The periods for which statements were supplied showed operating losses plus deferred depreciation charges. Counsel for the provincial Government contended that the figures furnished did not properly represent the traffic earnings on the line, as periods of low earnings had been selected by the applicant and curtailment of train service contributed to lower earnings on the railway; also if the railway service was continued it was apparent greater co-operation would be forthcoming from those concerned to make rail operation more profitable, provided adequate service could be maintained.

Statements of earnings and disbursements filed by the railway showed substantial operating losses. It was stated in Victoria, Vancouver and Eastern Railway and Navigation Company v. Town of Keremeos *et al,* 43 C.R.C. 236 at p. 246, that:—

> "Allocating freight receipts on a pro rata basis, according to the distance over the connecting line freight is hauled, is considered a legitimate method of computation."

The same principle should also, in my view, apply to expenditures for maintenance or renewals, by prorating over the number of years for which improvements will last.

The losses sustained by the railway should warrant more co-operative effort by all concerned to stimulate traffic and retain railway service. Train service should be regulated according to the business offering. Continuation of railway service, therefore, as well as the class and frequency of that service, is dependent to a large extent on community effort.

Havelock is situated 12·3 miles north of Petitcodiac on the Saint John-Moncton main line of the Canadian National Railways, and serves a district within a radius of 10 miles, which has no other railway facilities. Elgin 13·8 miles from Petitcodiac serves a district of similar proportion to Havelock and no other railway serves the territory south of the main line extending to the bay of Fundy, approximately 35 miles, and east from the Salisbury and Harvey branch line to the Hampton and St. Martins branch line, a distance from east to west of over 70 miles.

In the past five or six years, forty families have been induced by the provincial Government to settle along this line on account of its being handy to the railway (Vol. 619-620, page 532), and it appears efforts are still being made to rehabilitate farming areas at considerable expense to the New Brunswick Government.

Suspension or abandonment of the service would be disastrous to communities which have no other railroad service, and no adequate highways for truck and automobile traffic. Manufactures elsewhere will be injured if lumber shipments cease. The maple sugar industry would be ruined. Farmers would be seriously handicapped in disposing of their products and the handling of supplies. Substantial decreases in the values of real estate would result. Lumber companies would have to close their plants, thereby adding to the list of the unemployed by the dismissal of those now employed in lumbering and milling.

The uncontroverted testimony of a number of witnesses demonstrated that from the standpoint of the lumbering, farming, dairying and other community interests served, public convenience and necessity require the continued operation of this line of railway.

In the circumstances of this case, I would dismiss the application.

OTTAWA, August 30, 1935.

Concurred in by the Assistant Chief Commissioner and Commissioner Norris.

ORDER No. 52206

In the matter of the application of the Canadian National Railways, hereinafter called the "applicants," under Section 165A of the Railway Act, for approval of the abandonment of operation of their Elgin and Havelock Subdivisions, in the Province of New Brunswick, between Elgin, mileage 13·8, and Petitcodiac, mileage 0·0; and between Petitcodiac, mileage 0·0, and Havelock, mileage 12·3, a total distance of 26·1 miles.

File No. 39310.2

TUESDAY, the 3rd day of September, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Petitcodiac, May 1, 1935, in the presence of counsel for and representatives of the applicants, the Government of the Province of New Brunswick, Maritime Board of Trade, and the Saint John Board of Trade, the evidence offered, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52170

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

TUESDAY, the 20th day of August, A.D. 1935.

Hon. H. GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

It is ordered: That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act, namely:—

Supplement No. 103 to Tariff C.R.C. No. E-1235.
Supplement No. 28 to Tariff C.R.C. No. E-1829.
Supplement No. 5 to Tariff C.R.C. No. E-1976.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52171

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 20th day of August, A.D. 1935.

Hon. H. GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 102 of Supplement No. 21 to Tariff C.R.C. No. 906, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 21 to Tariff C.R.C. No. 906, approved herein, is 9 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52172

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

TUESDAY, the 20th day of August, A.D. 1935.

Hon. H. GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 735, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 735, approved herein, is 6 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52175

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

FRIDAY, the 23rd day of August, A.D. 1935.

Hon. H. GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

It is ordered: That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act, namely:—

Supplement No. 50 to Tariff C.R.C. No. E-1234.
Supplement No. 102 to Tariff C.R.C. No. E-1235.
Supplement No. 33 to Tariff C.R.C. No. E-1238.
Supplement No. 26 to Tariff C.R.C. No. E-1239.
Supplement No. 56 to Tariff C.R.C. No. E-1244.
Supplement No. 35 to Tariff C.R.C. No. E-1247.
Supplement No. 44 to Tariff C.R.C. No. E-1804.
Supplement No. 45 to Tariff C.R.C. No. E-1804.
Supplement No. 46 to Tariff C.R.C. No. E-1804.
Supplement No. 27 to Tariff C.R.C. No. E-1829.
Supplement No. 18 to Tariff C.R.C. No. E-1974.
Supplement No. 7 to Tariff C.R.C. No. E-2248.
Supplement No. 8 to Tariff C.R.C. No. E-2248.
Supplement No. 3 to Tariff C.R.C. No. E-2261.
Supplement No. 4 to Tariff C.R.C. No. E-2269.
Tariff C.R.C. No. E-2284.
Tariff C.R.C. No. E-2311.

H. GUTHRIE,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT BOARD OF RAILWAY COMMISSIONERS, FOR JUNE, 1935

Railway accidents	191,	with 16	persons killed and	177 injured.
Railway accidents at highway crossings	12,	with 6	persons killed and	14 injured.
	203	22		191

	Killed	Injured
Passengers	1	18
Employees	5	125
Others	16	48
	22	191

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

New Brunswick

No. of Accidents	
1	Auto Truck—Driver failed to see or hear train. Licence N.B. CJ-1333.

Quebec

1	Automobile—Auto driver failed to stop for crossing. Licence Ont. X-409.
1	Pedestrian—Passed under lowered gates.

Ontario

2	Automobile—Auto ran into side of train. Licences, Ont. VP-809; B-963.
1	Auto Truck—Truck driver failed to see or hear train. Licence Ont. 46549-C.
1	Auto Truck—Reckless driving, Section Foreman failed to comply with Rule 18. Licence Ont. 55427-C.
1	Pedestrian—Apparently committed suicide.

Saskatchewan

1	Automobile—Ran into side of train. Licence Sask. 33-330.
1	Automobile—Failed to take precaution. Licence Sask. D-429.

British Columbia

2	Automobile—Auto driver failed to see or hear train. Licences, B.C. 39984; 43-846.

Of the 12 accidents at highway crossings, 3 occurred at Protected Crossings and 9 at Unprotected crossings. Nine of the accidents occurred during the daylight hours and 3 at night.

Ottawa, Sept. 6, 1935.

SUMMARIES OF ORDERS ISSUED BY THE BOARD OF RAILWAY COMMISSIONERS

52133. Aug. 6—Authorizing Canadian Freight Association to file supplements advancing certain rates on grain in bulk, ex lake, from Montreal, Que., etc., now published in Supp. 16 to C.N.R. tariff C.R.C. No. E.-2159 and Supp. 22 to C.P.R. tariff C.R.C. No. E-4491.

52134. Aug. 7—Declaring C.P.R. crossing of Nipissing Street, Sturgeon Falls, Ont., protected to Board's satisfaction provided no car or locomotive is allowed to stand on the sidings, within at least 50 feet of the crossing.

52135. Aug. 7—Declaring C.P.R. crossing of King Street, Sturgeon Falls, Ont., protected to Board's satisfaction provided no car or locomotive is allowed to stand on the sidings, within at least 50 feet of the crossing.

52136. Aug. 6—Approving Supp. 1 to agreement between Bell Telephone Co., and Madame Anna Lemay Milot, owner of Le Telephone Milot.

52137. Aug. 6—Approving Supp. 2 to agreement between Bell Telephone Co., and La Compagnie de Telephone de l'Avenir.

52138. Aug. 7—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in Supp 7 to Tariff C.R.C. No. 3 filed by the Maritime Coal, Ry. & Power Co., under sec. 9.

52139. Aug. 7—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in supp. 5 to tariff C.R.C. No. 874, filed by Dominion Atlantic Ry. under sec. 9.

52140. Aug. 7—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in Supp. 7 to tariff C.R.C. No. 875, filed by Dominion Atlantic Ry. under Sec. 9.

52141. Aug. 7—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in Tariff C.R.C. No. 974 filed by Dominion Atlantic Ry. under Sec. 9.

52142. Aug. 7—Approving location and details of C.P.R. proposed new station at St. Lin, Que.

52143. Aug. 6—Amending Orders 51089, June 7, 1934 and 51233, July 24, 1934, to provide that after deducting 40 per cent of cost of installing bell and wigwag at C.N.R. crossing at mileage 23·2 Huntsville Subd'n, to be paid out of Railway Grade Crossing Fund, one-third of remainder of cost of installation and one-third of cost of maintenance be paid by Dep't Northern Development of Ont. instead of by Tp. of Stephenson.

52144. Aug. 7—Authorizing C.P.R. to construct spurs to serve Canada Packers Ltd., and Public Markets, Ltd., at St. Boniface, Man.

52145. Aug. 9—Directing that all switch movements between centre and north gates of C.N. Rys. crossing of DeCourcelles Street, Montreal, Que., be protected by flag, irrespective of the type of engine being used in the service.

52146. Aug. 9—Approving and authorizing clearances at coal loading platform at C.P.R. siding serving J. Ray Rupee at Pennlyn, N.B.

52147. Aug. 10—Authorizing B.C. Dep't Public Works to construct highway crossing over C.P.R. at mileage 22·22 Nelson Subd'n B.C.

52148. Aug. 7—Authorizing C.P.R. to construct extension to spur to serve Etter-McDougall Sawmills, Ltd., in NW¼ Sec. 7-46-3 W5M., Alta.

52149. Aug. 8—Amending Order 50868, Mar. 14, 1934, by striking out paragraph 3 and substituting clause directing that remainder of cost of installation of floodlights, as well as cost of maintenance, be borne and paid by Dep't of Highways of Ontario—re C.N.R. crossing immediately west of platform at Tillsonburg, Ont.

52150. Aug. 9—Amending Order 51465, Oct. 26, 1934, by striking out figures "$150.00" in second line of paragraph 2 and substituting therefor the figures "$134.36." —re crossing of C.N. Rys. first south of Palgrave, Ont.

52151. Aug. 13—Authorizing C.P.R. to construct spur to serve Consolidated Mining and Smelting Co., of Canada, Ltd., at Tadanac, B.C.

52152. Aug. 13—Authorizing New York Central R.R. to remove station agent at Stevensville, Ont. (Caretaker to be appointed).

52153. Aug. 13—Authorizing C.N. Rys. to remove the caretaker at Canfield Jct., Ont.

52154. Aug. 12—Declaring C.P.R. crossing at Shaughnessy Street, Coquitlam, B.C., protected to Board's satisfaction so long as present speed limitation of 10 miles an hour is in effect.

52155. Aug. 15—Authorizing C.P.R. to construct spur to serve Nathaniel Howells, near Rosedale, Alta.

52156. Aug. 12—Relieving C.P.R. from maintaining signalman to operate crossing at Elwood, Ont., between 8 p.m. and 4 a.m. week days and from 4 a.m. to 8 p.m. on Sundays.

52157. Aug. 6—Approving present train service of C.N. Rys. between Winnipeg and Somerset, Man., via Morris.
52158. Aug. 15—Authorizing C.N. Rys. to divert Highway No. 12 near mileage 72·6 Midland Subd'n, Ont., closing highway across right of way, and to construct subway to carry diverted highway under railway.
52159. Aug. 14—Declaring C.P.R. crossing immediately west of shelter at Summerville, Ont., protected to Board's satisfaction.
52160. Aug. 16—Authorizing Ont. Dep't Highways to construct subway under C.N. Rys. at Plains Road Crossing at Burlington Jct., Ont.
52161. Aug. 16—Authorizing Nova Scotia Dep't Highways to divert Trans-Canada Highway and construct overhead bridge across C.N. Rys. at Springhill Jct., N.S.
52162. Aug. 16—Directing Pere Marquette Ry. to install automatic bell and wigwag signal on north side of crossing of Division Street, Kingsville, Ont.
52163. Aug. 17—Declaring C.N. Rys. crossing, first west of Bruno Station, Sask., protected to Board's satisfaction.
52164. Aug. 16—Authorizing Village of Eastman, Que., to construct highway diversion in Lot 1255, and close crossing over C.P.R. at mileage 94·3 Sherbrooke Subd'n, Que.
52165. Aug. 16—Authorizing Ont. Dep't of Highways to construct overhead crossing of C.P.R., in lieu of grade crossing, in Lot 13, Con. 2, Tp. Oso, north of Village of Sharbot Lake, Ont.
52166. Aug. 21—Declaring C.P.R. crossing of Golf Street, North Bay, Ont., protected to Board's satisfaction.
52167. Aug. 20—Authorizing Ont. Dep't Northern Development to construct a highway crossing over C.P.R. near Cutler, in Serpent River Indian Reserve, Ont.
52168. Aug. 19—Authorizing C.P.R. to construct spur to serve Standard Oil Co. of B.C., Ltd., in Mun. of Burnaby, B.C.
52169. Aug. 17—Authorizing C.N. Rys. to enter upon lands of Mr. Swale and James Kilby and remove trees and woodpile obstructing view of trains at first crossing north of Callander, Ont.
52170. Aug. 20—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in tariffs filed by C.N. Rys. under sec. 3.
52171. Aug. 20—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in item 102 of Supp. 21 to tariff C.R.C. No. 906 filed by Dominion Atlantic Ry. under sec. 9.
52172. Aug. 20—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, toll published in Tariff C.R.C. No. 735 filed by Temiscouata Ry. under sec. 9.
52173. Aug. 21—Declaring C.N. Rys. crossing of 87th Street, Edmonton, Alta., satisfactorily protected so long as speed limitation of 10 miles an hour is in effect.
52174. Aug. 23—Approving plan showing general layout of C.N. Rys. special station to be erected at Brancepeth, Sask.
52175. Aug. 23—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in tariffs filed by C.N. Rys. under sec. 3.
52176. Aug. 22—Approving pipe line construction of Sunnyside Cannery of B.C., Ltd., under C.N. Rys. at Skeena River, B.C.
52177. Aug. 21—Authorizing Northern Alberta Rys. to construct highway crossing in SE¼ of Sec. 35-63-20 W4M., Alta.
52178. Aug. 21—Declaring C.N. Rys. crossing at mileage 85·7 Margo Subd'n, Sask., protected to Board's satisfaction.
52179. Aug. 22—Authorizing Niagara, St. Catharines & Toronto Ry. to cross Lynden Street, Thorold, Ont., with private siding to serve Shell Oil Co., of Canada, Ltd.
52180. Aug. 23—Authorizing C.P.R. to construct spur to serve H. Johnston, at mileage 24·1 Arrow Lake Subd'n, B.C.
52181. Aug. 23—Authorizing C.N. Rys. to construct spur to serve Canada Packers, Ltd., along and across 70th Street and across 124th Avenue, Edmonton, Alta.
52182. Aug. 21—Declaring New York Central R.R. crossing of Russell Road, first south of Hurdman Station, Ont., protected to Board's satisfaction.
52183. Aug. 15—Approving abandonment of operation of portion of C.N. Rys. Lovett Subd'n, between Foothills and Lovett, a distance of 4·6 miles.
52184. Aug. 19—Refusing application of C.N. Rys. for approval of abandonment of operation of their Locksley Subd'n between Golden Lake and National Jct., Ont.
52185. Aug. 19—Approving abandonment of operation of C.N. Rys. Otterville Subd'n between Simcoe Jct., and Otterville, Ont., a distance of 14·2 miles.
52186. Aug. 24—Approving changes proposed by Quebec Dep't of Highways at crossing of Poirier Street by Bridge Division of C.N. Rys. in Village of Charny, Que.
52187. Aug. 26—Authorizing C.P.R. to construct branch line for grain loading at Kneehill, Alta., to serve the K.V.P. Grain Co.

52188. Aug. 27—Authorizing B.C. Dep't of Public Works to divert public highway and construct crossing over C.N. Rys. 550 feet north of existing crossing, which is to be closed, at a point 3 miles north of Kelowna, B.C.

52189. Aug. 28—Approving plans of C.N. Rys. station to be erected at London, Ont.

52190. Aug. 27—Approving supp. 3 to agreement between Bell Telephone Co. and The Eastern Townships Telephone Co., Ltd.

52191. Aug. 26—Authorizing Sask. Dep't of Highways to construct overhead crossing of C.N. Rys. in NE¼ of Sec. 17-38-26 W2M., Sask.

52192. Aug. 29—Authorizing C.N.Rys. to cross Canning Street and Chatham Street, Montreal, Que., with additional team tracks.

52193. Aug. 29—Refusing application of Shuswap Lake Lumber Co., Ltd., of Canoe, B.C., for reduction of rates on lumber in carloads from Canoe, B.C., to all points in province of Ontario.

52194. Aug. 30—Declaring C.N. Rys. crossing (Fitzpatrick's Crossing), mileage 49·01 Oxford Subd'n, N.S., protected to Board's satisfaction.

52195. Aug. 29—Declaring that (1) the Applicants (Alberta Block Coal Co., Ltd., and Newcastle Coal Co., Ltd., of Drumheller, Alta.) have not brought themselves within the provisions of exception to Demurrage Rule No. 3; (2) when cars are placed on siding so that they can be moved to loading point at the convenience of shippers, it is considered that they have been placed in a reasonably accessible position for loading within the provisions of Demurrage Rule No. 7 (*a*); (3) when cars are placed for loading before 7 a.m. on the date specified, free time, under Demurrage Rule No. 4 (*a*), commences from the first 7 a.m. after placement.

52196. Aug. 29—Authorizing Dep't Northern Development of Ontario to construct crossing where C.N. Rys. intersect highway between Tps. Beaucage and Pedley, Con. 2, Dist. of Nipissing, Ont.

52197. Aug. 29—Directing that all snow-plows operated by C.N. Rys. be equipped with suitable lookouts, with men in charge thereof, to convey signals to engine crew. This Order to become effective not later than Nov. 1, 1936.

52198. Aug. 30—Authorizing Ont. Dep't of Highways to construct subway under C.N. Rys. on Highway No. 31, in the Village of Morrisburg, Ont.

52199. Aug. 29—Authorizing City of Port Arthur, Ont., to construct a subway under C.P.R. and close existing crossing known as Sheep Ranch Crossing on Trans-Canada Highway.

52200. Aug. 30—Approving improvement to grade at approaches to crossing of C.P.R. on County Road No. 3, opposite Con. 10, between Lots 5 and 6 of Tp. of Garafraxa, Co. Dufferin, Ont.

52201. Aug. 29—Authorizing B.C. Dep't Public Works to construct highway diversion at Laurier, B.C., and to close two existing crossings of Vancouver, Victoria & Eastern Ry. & Nav. Co.

52202. Aug. 30—Declaring C.P.R. crossing of Main Street, Deschenes Mill, Que., protected to Board's satisfaction.

52203. Aug. 29—Refusing application of residents of district surrounding St. Paul & Heinsburg, and intermediate points, on Coronado Subd'n of C.N. Rys., Alberta, for reduction in rates on grain, in carloads, to the head of the lakes.

52204. Aug. 29—Authorizing Mun. of Townships of Shackleton and Machin, Ont., to construct overhead bridge at Third Avenue and to close grade level crossing of C.N. Rys. at Fauquier, Ont.

52205. Aug. 31—Rescinding Order 52001, May 31, 1935, imposing a speed limitation of 10 miles on hour at crossing of C.P.R. on MacTavish Street, Fort William, Ont.

52206. Sept. 3—Refusing application of C.N. Rys. for approval of abandonment of operation of their Elgin & Havelock Subd'ns, between Elgin and Petitodiac and between Petitodiac and Havelock, N.B., a distance of 26·1 miles.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXV Ottawa, October 1, 1935 No. 14

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Application of the Canadian National Railways for an Order granting leave to abandon the operation of a portion of its Otterville Subdivision, in the Province of Ontario, between Hickson (M. 49·10) and Tavistock Junction (M. 55·6)—a distance of 6·5 miles.

(File 39310.22)

JUDGMENT

McLean, Assistant Chief Commissioner:

Application is made by the Canadian National Railways under section 165A of the Railway Act, section 2, subsection 3, of the Canadian National-Canadian Pacific Act, 1933, and all other appropriate statutory provisions, for an order granting it leave to abandon the operation of a portion of the Otterville Subdivision, in the province of Ontario, between Hickson (M. 49·10) and Tavistock Junction (M. 55·6)—a distance of 6·5 miles.

The line in question was opened in 1876, and was built under the charter of the Port Dover and Lake Huron Railway Company, which, as the result of various amalgamations, has become amalgamated with the Canadian National Railway Company. There has been no train service operated over and no maintenance done on the line since December 4, 1932. The line passes through well-settled territory, in which dairying and live stock raising form the principal industries. The country roads are improved by being hard surfaced. There is no town between Hickson and Tavistock Junction. Trucking has developed to a considerable extent; for example, freight from the north is handled by truck. Milk is handled by truck for the Borden Creamery, which has a plant at Hickson. The existing service is stated not to be satisfactory. It is stated that what formerly was express business is now largely handled by truck. There is a dispute as to whether the change is because of the nature of the service afforded by the railway or because of the competition to which the railway is subjected.

From October 1, 1930, to September 30, 1931, the passenger revenue at Hickson amounted to $669. This includes the passenger revenue from Hickson south, and from the southern points, from St. George and Woodstock north to Hickson, as well as from Tavistock to Hickson.

Having in mind the light traffic and the good roads supplied, it would appear that the general interests transcend the local interest and, therefore, the application may be allowed. This is without prejudice to such remedies, if any, as may be open to the parties in a court of competent jurisdiction.

September 10, 1935.

Concurred in by Commissioner Norris, the Deputy Chief Commissioner dissenting.

Application of the Canadian National Railways for an Order granting leave to abandon the operation of a portion of its Otterville Subdivision, in the Province of Ontario, between Hickson (M. 49·10) and Tavistock Junction (M. 55·6)—a distance of 6·5 miles.

(File No. 39310.22)

JUDGMENT

GARCEAU, DEPUTY CHIEF COMMISSIONER (dissenting):

The second paragraph of the Assistant Chief Commissioner's judgment reads in part as follows: "There is a dispute as to whether the change" (diversion of traffic) " is because of the nature of the service afforded by the railway or because of the competition to which the railway is subjected."

The volume of traffic necessary to permit a satisfactory operation of the railway, without competition, is not in question.

The only reliable service is the railway. It is under the control of the Board and it can be coerced to operate the year around.

Transportation by trucks and buses is left to the goodwill of the carriers and, when the whole question of transportation either by highways, railways, water routes or airways will necessarily be studied and placed under one control as to rates, regulations, service, etc., I do not believe it is in the interest of the public that the railways be allowed to scrap assets worth hundreds of thousands of dollars, which assets may be found essential when a national system of transportation is established.

Moreover, in this instance, subsidies have been paid by the provincial government and the municipalities. The extent of the obligations contracted by the railways on account of these subsidies, we do not know; but it is not preposterous to assume that these subsidies were granted not only for the building of the railway but also for its continued operation. Contracts or by-laws exist embodying these obligations.

For these reasons, which I have developed more fully in my judgment of the 12th instant, on file 39310.1, application of C.N.R. to abandon operation of its line between Farnham and Frelighsburg—(I refer to this judgment when it issues)—I would dismiss the application.

September 16, 1935.

ORDER No. 52254

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 165A of the Railway Act, for approval of the abandonment of operation of a portion of their Otterville Subdivision, in the Province of Ontario, between Hickson (mileage 49·10) and Tavistock Junction (mileage 55·6), a distance of 6·5 miles.

File No. 39310.22

WEDNESDAY, the 18th day of September, A.D. 1935.

Hon. H. GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Woodstock, Ontario, May 10, 1935, in the presence of counsel for and representatives of the applicants, the Woodstock Board of Trade, the City of Woodstock, the Township of East Zorra, and the Ralston Purina Company, and what was alleged,—

It is ordered: That the abandonment of operation of a portion of the applicants' Otterville Subdivision, in the province of Ontario, between Hickson (mileage 49·10) and Tavistock Junction (mileage 55·6), a distance of 6·5 miles, be, and it is hereby, approved; such approval to be without prejudice to the rights or remedies of the parties, if any, in the courts.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52207

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for leave to eliminate upon less than statutory notice Calabogie, Ontario, from its Tariff C.R.C. No. E-4746, a point at which collection and delivery is performed.

File No. 27612.122

FRIDAY, the 6th day of September, A.D. 1935.

Hon. H. GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that the applicant company is unable to arrange for collection and delivery of freight at Calabogie, Ontario,—

It is ordered: That the applicant company be, and it is hereby, permitted to publish and file, on three days' notice, an amendment to its Tariff C.R.C. No. E-4746, eliminating Calabogie, Ontario, as a collection and delivery point.

H. GUTHRIE,
Chief Commissioner.

GENERAL ORDER No. 542

In the matter of the General Order of the Board No. 512, dated April 4, 1933, as amended by General Order No. 518 and General Order No. 523, dated respectively October 10, 1933, and December 7, 1933, made upon the application of Shipping Containers, Limited, of Montreal, Quebec, granting leave to use, for shipping over railways in Canada, certain shipping containers prescribed in Interstate Commerce Commission regulations for the transportation of explosives and other dangerous articles by freight, filed by B. W. Dunn, Agent, under C.R.C. No. 2;

And in the matter of the application of Shipping Containers, Limited, for an Order further amending the said General Order No. 512:

File No. 1717.35.

THURSDAY, the 12th day of September, A.D. 1935.

HON. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*
HON. T. C. NORRIS, *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Assistant Chief Traffic Officer of the Board, the Railway Association of Canada consenting,—

It is ordered: That the said General Order No. 512, dated April 4, 1933, as amended, be, and it is hereby further amended by adding at the end thereof the following paragraph, namely:—

(*e*) "Boxes of three-piece type, except those with recessed end or ends, complying with the foregoing and also with paragraphs 14, 15, 16, and 20 of Shipping Container Specification 23A, are also authorized."

H. GUTHRIE,
Chief Commissioner.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXV | Ottawa, October 15, 1935 | No. 15

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Application of the Canadian Pacific Railway Company for an order granting it leave to abandon the operation of that portion of the Kettle Valley Railway known as the North Fork Subdivision of the Canadian Pacific Railway, extending from West End (Mile ·0) at mileage 95·9 on Boundary Subdivision to Archibald (Mile 17·4), a distance of 17·4 miles.

File 39309.2

JUDGMENT

McLean, Assistant Chief Commissioner:

During the year 1931 there was a mixed train service on Thursdays only. There has been no regular train service since 1932. Trips were made from time to time to meet the demands of traffic. In 1933 there were eighteen round trips. It was stated by Mr. McMullen that his information was that there had been twelve trips in 1934. Financial statements covering the operations for the years 1932, 1933 and 1934 are filed.

For the year 1932 the excess of gross earnings over out of pocket expenses amounted to $539; for the year 1931 the figure was $503. It is explained that the earnings were divided on a mileage basis as between the main line and branch line. The out of pocket expenses for the year in question on the branch line were $13,298. This amount is made up of maintenance of way and structure, $6,469; transportation, $1,945; other expenses, $4,884. (See exhibit No. 1). It is pointed out that previous to 1932 the cost of operation of the branch line was $13,298. In this there is included a credit to the branch line for the earnings on freight originating on or destined to the branch—the net earnings of the balance of the system. The earnings on the balance of the system are arrived at as follows: First there is taken the general operating ratio, which is stated to have been 77 per cent last year. Analysis shows freight operating ratio runs about ten points lower than the general operating ratio. Therefore, there would be an operating ratio of 67 per cent if the railway were dealing with freight alone. Next there is deducted from this general ratio the general items, such as head office expenses and overhead, amounting to about one-third of the freight operating costs. This brings the ratio down to 45 per cent. In the computation made, therefore, the railway treats the 45 per cent of the earnings off the branch line as the cost to the company of moving this freight to its destination on the portion of the system off the branch. This leaves 55 per cent of the gross earnings on freight, which the railway treats as net earnings. In a

statement submitted, the railway is giving credit to the branch line for 55 per cent of the gross earnings on the freight which has moved off the branch lines, which amounts to $13,140, showing a profit of $539. The year 1933 showed a loss from operation of branch line of $28,399, and deducting 55 per cent earnings on the balance of the system gives a figure of $4,692, which gives a deficit of $23,707. For the year 1934 the loss from operation of branch line is $10,095; and deducting 55 per cent earnings on the balance of the system, or $2,319, leaves $7,776.

It is stated by the railway it would take about 2,000 ties to put the track into shape to continue operation, and these ties would cost about $3,000.

It is not contended by those opposing the application that the branch line is in a profitable condition. It is urged that the railway should be allowed to operate some time longer in order to show what can be done in the way of mining development. In general there was a plea for an extension of one year.

Louis A. Grant, Mining Superintendent for the Union Mine in Franklyn Camp, gave evidence. Commissioner Stone questioned the witness in the following language: "Mr. Grant, would your company be in a position to advise the Board whether there are prospects of future developments, say in three months? Would you know by that time?" Answer: "We will know definitely within three months whether we are going to find anything in this prospect or not." (p. 2390.) He continued, and stated that the next year's operation that is anticipated will depend entirely upon whether the railroad is taken out or not.

The Union Mine is the property on whose importance as a development factor the emphasis is laid. According to those opposing the application, the strongest evidence they had to submit was concerned with mining. (See in this connection statement of Mr. Pincott, who appeared as counsel for Grand Forks Board of Trade—p. 2389.) While it was stated that farm produce was used locally by the mines, it was admitted by the same counsel that agricultural products were not important in the present application. The movement of poles was referred to. Apparently the situation here is that the poles had been cut and were lying in the district for some years. According to statement made by Mr. Pincott (p. 2377), the movements in 1933 were as follows: one car to Regina, and seven to Minneapolis. Mr. McMullen for the railway stated that the poles in question had been cut and had been lying in the district for some years. While it is stated that the movement of traffic has about used up the supply that has been cut, and that, therefore, further demands would mean further expansion of the market, it would appear this is still in the conjectural stage.

The following traffic figures are available for the year 1934 on the movement from West End to Archibald:—

Station Humming Bird—two carloads of hay out with earnings—$90;

From Stanwell one car of posts with earnings—$102;

From Lynch Creek, outbound, 7 carloads of poles; inbound, 5 carloads of fuel oil with lime. Total of $4,127 on movement to and from Lynch Creek; total of $4,319 on movement to and from the stations in question with carload movement of sixteen cars.

The railway is paralleled by the local road on both sides for its entire length. These roads are connected by a bridge over the river at Lynch Creek, and from Lynch Creek the road extends northerly to the mining area thirty-two miles beyond. There was a connection between these two roads at Humming Bird, but the bridge over the river at this point became impassable for traffic in 1934 and was taken out. These roads wind through the valley and are, therefore, quite crooked, and are also narrow. They are not gravelled but owing to the stony nature of the country, the foundation is good and they

are quite suitable for hauling. The distances between stations and from Grand Forks to the end of steel are about the same on the highway as on the railway.

Mr. McMullen stated the railway had an understanding with the provincial Government that they would take over for highway purposes and utilize all of the roadbed or such portions of it as would improve the existing highway service. He further stated the railway proposed to leave the bridges just where they were. As bearing on this the following communication was received from the Hon. Mr. Pattullo, Minister of Railways, Province of British Columbia:—

> "With reference to your Notice of Sitting, dated June 14, 1935, your file 39309.2, in the City Hall, Grand Forks, B.C., on Friday, July 19, 1935, with reference to the application of the Canadian Pacific Railway Company, for an order granting it leave to abandon the operation of that portion of the Kettle Valley Railway known as the North Fork Subdivision of the Canadian Pacific Railway, extending from West End (Mile ·0) at mileage 95·9 on Boundary Subdivision to Archibald (Mile 17·4), a distance of 17·4 miles.
>
> The officials of the Public Works Department of this Government have been in conference with the officials of the Canadian Pacific Railway Company and it has been mutually agreed that this Government will not oppose the abandonment on the understanding that after such ties, steel rails and water tanks as are required for further use by the company have been removed from the site, the right of way, station buildings, bridges and other works will be transferred to the province without expense to us.
>
> Provincial legislation contained in chapter 26 of the statutes of 1910 necessitates that the consent of the legislature be given to the abandonment of this line and the above agreement between the province and the railway company is subject to an Act of the legislature being passed relieving the railway company of its obligations. It is intended to introduce the necessary legislation at the next sitting of the legislature."

On consideration and subject to the conditions set out in the communication from the provincial Department of Railways, the application of the railway may be allowed.

September 27, 1935.

Concurred in by Commissioners Norris and Stone.

ORDER No. 52310

In the matter of the application of the Canadian Pacific Railway Company, as lessee exercising the franchises of the Kettle Valley Railway Company, hereinafter called the "Applicant Company," under section 165A of the Railway Act, for approval of the abandonment of operation of that portion of the Kettle Valley Railway known as the North Fork Subdivision of the Applicant Company, extending from Westend, mileage 0 (at mileage 95·9 Boundary Subdivision), to Archibald, mileage 17·4, a distance of 17·4 miles.

File No. 39309.2

FRIDAY, the 27th day of September, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Grand Forks, British Columbia, July 19, 1935, in the presence of counsel for and repre-

sentatives of the applicant company, the city of Grand Forks, and the Board of Trade of Grand Forks, and what was alleged,—

It is ordered: That the abandonment of operation of that portion of the Kettle Valley Railway known as the North Fork Subdivision of the applicant company, extending from Westend, mileage 0 (at mileage 95·9 Boundary Subdivision), to Archibald, mileage 17·4, in the province of British Columbia, a distance of 17·4 miles, be, and it is hereby, approved, subject to and upon the conditions following, namely:—

(*a*) That after such ties, steel rails, and water tanks as are required for further use by the applicant company have been removed from the site, the right of way, station buildings, bridges, and other works be transferred to the Government of the Province of British Columbia without expense to the said province; and

(*b*) That an Act of the Legislature of the Province of British Columbia be passed relieving the applicant company from the obligations imposed under an agreement, dated February 28, 1910, between His Majesty the King and the Kettle River Valley Railway Company, ratified by chapter 26 of the Statutes of British Columbia, 1910.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52256

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

TUESDAY, the 24th day of September, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item 496 of Supplement No. 19 to Tariff C.R.C. No. E-4742, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 19 to Tariff C.R.C. No. E-4742, approved herein, is 40 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52267

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under section 276 of the Railway Act, for authority to open for the carriage of traffic that portion of its Swift Current Southeasterly Branch from Meyronne, at mileage 44·02, to Vanguard, at mileage 76·32, in the Province of Saskatchewan.

File No. 17157.34

WEDNESDAY, the 25th day of September, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of a Division Engineer of the Board, concurred in by its Chief Engineer,—

It is ordered: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic, at a speed not exceeding twelve miles per hour, that portion of its Swift Current Southeasterly Branch from Meyronne, at mileage 44·02, to Vanguard, at mileage 76·32, in the province of Saskatchewan.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52271

In the matter of the application of the Detroit International Bridge Company, hereinafter called the "Applicant Company," for approval of its Tariff C.R.C. No. 6, cancelling C.R.C. No. 5, covering the tolls to be charged in respect of the Ambassador Bridge across the Detroit river between the Town of Sandwich, in the Province of Ontario, and the City of Detroit, in the State of Michigan, on file with the Board under file No. 36795.2.

THURSDAY, the 26th day of September, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the applicant company's Tariff C.R.C. No. 6, cancelling C.R.C. No. 5, covering the tolls to be charged in respect of the Ambassador bridge across the Detroit river, between the town of Sandwich, in the province of Ontario, and the city of Detroit, in the state of Michigan, on file with the Board under file No. 36795.2, be, and it is hereby, approved.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52285

In the matter of the application of the Toronto, Hamilton and Buffalo Railway Company, hereinafter called the "Applicant Company," under Section 165A of the Railway Act, for approval of the abandonment of operation of that portion of its railway known as the Ridgeville Spur, extending from Ridgeville Junction, being a point on the main line of the Applicant Company between Welland and Hamilton, in Lot 7, Concession 12, of the Township of Pelham, to a point in Lot 7, Concession 8, of the Township of Pelham, a distance of 2·66 miles.

File No. 39519

FRIDAY, the 27th day of September, A.D. 1935.

Hon. H. GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Hamilton, September 20, 1935, in the presence of counsel for the applicant company and the township of Pelham, as well as other interests opposing the application, and what was alleged,—

It is ordered: That the abandonment of operation of that portion of the applicant company's railway known as the Ridgeville Spur, extending from Ridgeville Junction, being a point on the main line of the applicant company between Welland and Hamilton, in lot 7, concession 12, township of Pelham, to a point in lot 7, concession 8, township of Pelham, in the province of Ontario, a distance of 2·66 miles, be, and it is hereby, approved.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52295

In the matter of the Order of the Board No. 52267, dated September 25, 1935, authorizing the Canadian Pacific Railway Company to open for the carriage of traffic that portion of its Swift Current Southeasterly Branch from Meyronne to Vanguard, Saskatchewan.

File No. 17157.34

TUESDAY, the 1st day of October, A.D. 1935.

Hon. H. GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon reading what has been filed on behalf of the railway company,—

It is ordered: That the said Order No. 52267, dated September 25, 1935, be amended by striking out the words "from Meyronne. at mileage 44·02, to Vanguard, at mileage 76·32," wherever they occur in the order, and substituting therefor the words "from Vanguard, at mileage 44·02, to Meyronne, at mileage 76·32."

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52315

In the matter of the application of the Buffalo and Fort Erie Public Bridge Authority, hereinafter called the "Applicant," for approval of Tariff C.R.C. No. A-5, covering tolls to be charged for the use of the Peace Bridge between Fort Erie, Ontario, and Buffalo, New York.

File No. 36795.1

WEDNESDAY, the 2nd day of October, A.D. 1935.

Hon. H. GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant's said Tariff C.R.C. No. A-5 (cancelling Tariff C.R.C. No. A-4), covering tolls to be charged for the use of the Peace Bridge between Fort Erie, in the province of Ontario, and Buffalo, in the state of New York, on file with the Board under file No. 36795·1, be, and it is hereby, approved.

H. GUTHRIE,
Chief Commissioner.

SUMMARIES OF ORDERS ISSUED BY THE BOARD OF RAILWAY COMMISSIONERS

52207. Sept. 6—Permitting C.P.R. to file on 3 days' notice an amendment to its tariff C.R.C. No. E-4746 eliminating Calabogie, Ont., as a collection and delivery point.

52208. Sept. 4—Amending Order 52128, August 3, 1935, by striking out words "and maintain" in 2nd line of operative part, and by adding at end of Order the words "the cost of maintaining the new crossing to be borne and paid by the Railway Company"—N.S. Dept. of Highways crossing over C.P.R. at False Bay, N.S.

52209. Sept. 4—Authorizing N.S. Dept. Highways to construct a highway crossing over C.N. Rys. at Brookfield, N.S.

52210. Sept. 3—Requiring C.N. Rys. to install additional devices at crossing at Dalhousie Jct., N.B., to provide for manual operation of wigwag signals.

52211. Sept. 4—Extending until November 15, 1935, time within which C.P.R. may construct spur to serve Trump Oil Co., Ltd., at Trump, Man.

52212. Sept. 4—Relieving C.N. Rys. from maintaining speed limitation of 20 miles an hour between Mile Post 10 and Mile Post 11·5, P.E.I.

52213. Sept. 4—Authorizing City of Prince Albert, Sask., to construct extension of 16th Street East across C.N. Rys.

52214. Sept. 4—Approving service station contract between Bell Telephone Co. and Parkhill Arkona Telephones, Ltd.

52215. Sept. 5—Approving location and details of C.N. Rys. station to be erected at Pacific, B.C.

52216. Sept. 6—Declaring C.P.R. crossing "Miller's Crossing," 10 poles north of mileage 9, Winnipeg Beach subdivision, Man., protected to Board's satisfaction.

52217. Sept. 4—Directing C.P.R. forthwith to appoint a temporary agent at Tuffnell Station, Sask.

52218. Sept. 4—Authorizing C.P.R. to remove fences from mileage 102·4 to 103·27 and from mileage 104·3 to 104·7, Acme to Empress Branch, Alta.

52219. Sept. 6—Approving C.P.R. plan showing changes to interlocking plant at crossing over C.N. Rys. near Cornwall, Ont.

52220. Sept. 6—Recommending to Governor in Council for sanction agreement between C.P.R. and Winnipeg River Ry. *re* working of railway of latter from Lac du Bonnet to Great Falls, Man.

52221. Sept. 4—Requiring C.N. Rys. to move present station building and construct extension to same, also cinder platform on new location at Ste. Therese de Gaspe, Que.

52222. Sept. 7—Approving location of C.N. Rys. third-class station proposed to be erected at Scott, Sask.

52223. Sept. 9—Directing C.N. Rys. to install flashing light in addition to bells and wigwags, and directing Ontario Dept. of Highways and C.N. Rys. to carry out certain other improvements to crossing of William Street, Cobourg, Ont.

52224. Sept. 3—Extending hours of duty of watchmen at Verniers crossing, just east of Coteau Station, Que., to 10 p.m. instead of 7 p.m. from May 15 to October 15 each year.

52225. Sept. 10—Authorizing Toronto, Hamilton & Buffalo Ry. to reconstruct highway bridge carrying Locke Street across the railway at Hamilton, Ont.

52226. Sept. 11—Declaring C.P.R. crossing, 4 poles south of mile 2, Emerson Subd'n, Man., protected to Board's satisfaction.

52227. Sept. 12—Declaring C.N. Rys. crossing, 2 miles west of South Durham, Que., protected to Board's satisfaction.

52228. Sept. 11—Approving location of C.N. Rys. combination station and freight shed to be erected at Lac Bouchette, Que.

52229. Sept. 13—Declaring C.N. Rys. crossing of Hurontario Street east of Port Credit., Ont., protected to Board's satisfaction.

52230. Sept. 13—Authorizing Canadian Govt. Rys. to construct pedestrian subway under their tracks at Halifax, N.S.

52231. Sept. 14—Authorizing Toronto, Hamilton & Buffalo Ry. to construct spur to serve The Kerr Milling Co., Ltd., crossing Main Street, at Dundas, Ont.

52232. Sept. 14—Authorizing Toronto, Hamilton & Buffalo Ry. to construct spur for Truder & McKee, along Bond Street and Park Street and crossing Brock Street, Dundas, Ont.

52233. Sept. 16—Authorizing N.S. Dept. Highways to close two crossings of C.N. Rys. and to construct highway diversion at White Point, N.S.

52234. Sept. 16—Directing Pere Marquette Ry. to install automatic bell and wigwag signal on each side of crossing of Elliott Street, Leamington, Ont.

52235. Sept. 16—Directing Pere Marquette Ry. to install automatic bell and wigwag at crossing of Erie Street, Leamington, Ont.
52236. Sept. 16—Directing C.P.R. to install wigwag signal, in addition to electric bell, at crossing of William Street, Carleton Place, Ont.
52237. Sept. 16—Directing C.P.R. to install wigwag signal in addition to electric bell at crossing of Daniel Street, Arnprior, Ont.
52238. Sept. 17—Directing Smiths Falls Suburban Area Commission to establish sight lines at crossing on Franktown Road, Tp. Montague, Co. Lanark, Ont.
52239. Sept. 17—Directing Smiths Falls Suburban Area Commission to clear away brush on northwest corner of C.P.R. crossing on Jasper Road, near Smiths Falls, Ont.
52240. Sept. 17—Directing C.N. Rys. to install two automatic bells and wigwags at crossing of Kingsbury Ave., Tp. Etobicoke, Ont.
52241. Sept. 18—Declaring Pere Marquette Ry. crossing just west of Pelton Tower, Ont., protected to Board's satisfaction.
52242. Sept. 17—Authorizing B.C. Dept. of Public Works to construct overhead bridge across C.N. Rys. on 10th Avenue, New Hazelton, B.C.
52243. Sept. 16—Authorizing C.N. Rys. to construct subway under their tracks at Ceepee, Sask.
52244. Sept. 18—Requiring C.P.R. to appoint an agent at Sanctuary, Sask., for the period of the grain shipping season.
52245. Sept. 18—Authorizing C.N. Rys. to reconstruct bridge over Lambert Creek, mileage 17·5 Lovett Subd'n, Alta.
52246. Sept. 18—Authorizing C.N. Rys. to make proposed changes in overhead walk to station at Prince Rupert, B.C.
52247. Sept. 18—Authorizing C.N. Rys. to remove station agent at Longford, Ont. (Caretaker to be appointed), provided agency is maintained during summer months to serve summer travel.
52248. Sept. 16—Authorizing Quebec Dept. of Roads to eliminate two grade level crossings of the Montreal & Southern Counties Ry. by diversion of the Montreal-Sherbrooke Highway at St. Paul d'Abbotsford, Que.
52249. Sept. 18—Authorizing C.N. Rys. to cross east and west road allowance in N.W. ¼ Sec. 9-24-27 W4M., at Norfolk, Alta.
52250. Sept. 16—Authorizing Sask. Dept. of Highways to construct overhead bridge across C.N. Rys. on No. 14 Highway north of Sec. 35-35-11 W3M., near Kinley, Sask.
52251. Sept. 18—Declaring C.N. Rys. crossing, first west of Wyten Station, Ont., protected to Board's satisfaction.
52252. Sept. 19—Amending Order 52204, August 29, 1935, by striking out word "Applicant" in 1st line of paragraph 1 of Order and substituting words "Canadian National Railways," and striking out words "it is" in said line substituting therefor words "they are"—overhead bridge at Third Avenue, Fauquier, Ont.
52253. Sept. 19—Amending Order 48126, February 12, 1932, by striking out words "County of Simcoe" at end of paragraph 2 and substituting therefor the words "Department of Highways for Province of Ontario"—*re* electric bell at crossing of C.P.R. at Victoria Street, Alliston, Ont.
52254. Sept. 18—Approving abandonment of operation of portion of C.N. Rys. Otterville Subd'n between Hickson and Tavistock Jct., Ont.
52255. Sept. 19—Directing C.N. Rys. to appoint a caretaker at Carlea, Sask.
52256. Sept. 24—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, toll published in item 496 of Supp. 19 to tariff C.R.C. No. E-4742 filed by C.P.R. under sec. 9.
52257. Sept. 24—Declaring C.P.R. crossing, second east of Yamachiche Station, Que., protected to Board's satisfaction.
52258. Sept. 24—Directing C.N. Rys. to install wigwag signal, in addition to electric bell, at crossing at Shediac, N.B.
52259. Sept. 23—Directing C.N. Rys. to install wigwag signal, in addition to electric bell. at crossing at Sylvan Valley, N.S.
52260. Sept. 24—Directing C.N. Rys. to install wigwag signal, in addition to electric bell, at crossing near Marysville, N.B. (Pickard's).
52261. Sept. 24—Authorizing P.E.I. Dept. Public Works to construct diversion of highways along south side of C.N. Rys. at Albany, P.E.I., so that Mount Tryon Road and Deighan Road be diverted into the Bedeque Road, two existing level crossings to be closed.
52262. Sept. 24—Directing C.N. Rys. to install two additional bells and wigwags at crossing of Victoria and Robinson Streets, C.N. Rys., at Moncton, N.B.
52263. Sept. 23—Authorizing N.S. Dept. of Highways to construct highway diversion and to close two existing crossings of C.N. Rys. near Lunenburg, N.S.

52264. Sept. 24—Authorizing Sask. Dept. of Highways to construct overhead bridge across C.P.R. one mile west of Scotsguard, Sask.

52265. Sept. 24—Directing C.P.R. to install double bells and wigwags at crossing of Talbot avenue, Winnipeg, Man.

52266. Sept. 24—Declaring C.N. Rys. crossing of Melvin avenue, Sudbury, Ont., protected to Board's satisfaction.

52267. Sept. 25—Authorizing C.P.R. to open for traffic portion of its Swift Current Southeasterly Branch from mileage 44·02 to Vanguard, mileage 76·32, Sask.

52268. Sept. 24—Declaring C.P.R. crossing, first east of English River, Ont., protected to Board's satisfaction.

52269. Sept. 24—Approving agreement between Bell Telephone Co. and Department of Lands and Forests for the Province of Ontario.

52270. Sept. 24—Authorizing C.N. Rys. to close and divert north and south road allowance between secs. 23 and 24-27-16 W2M., and to construct a crossing at mileage 65·61, Touchwood Subd'n, Sask.

52271. Sept. 26—Approving Detroit International Bridge Co.'s tariff C.R.C. No. 6 cancelling No. 5, covering tolls to be charged in respect of the Ambassador Bridge across Detroit river between Sandwich, Ont., and Detroit, Mich.

52272. Sept. 25—Declaring Algoma Central & Hudson Bay Ry. crossing of Batchewana Road at Island Lake, Ont., protected to Board's satisfaction.

52273. Sept. 23—Declaring C.P.R. crossing 1½ miles east of Clandonald, Alta., protected to Board's satisfaction.

52274. Sept. 26—Authorizing Pere Marquette Ry. to move present wigwag and bell from the Erie street crossing to the Hazelton street crossing at Leamington, Ont.

52275. Sept. 26—Authorizing P.E.I. Dept. of Public Works to improve view, establish sight lines, build up road approach and extend culvert at crossing over C.N. Rys. at Uigg Station, P.E.I.

52276. Sept. 27—Authorizing P.E.I. Dept. Public Works to improve approach on north side of C.N. Rys. crossing near Mount Herbert Station, P.E.I.

52277. Sept. 27—Authorizing P.E.I. Dept. Public Works to establish sight line on southwest corner of C.N. Rys. crossing of Melville Road, mileage 32·2, Murray Harbour Subd'n, P.E.I.

52278. Sept. 26—Directing P.E.I. Dept. Public Works to grade both approaches to C.N. Rys. crossing on Pottery Lane, mileage 0·8, Kensington Subd'n.

52279. Sept. 27—Directing P.E.I. Dept. Public Works to clear away brush and provide sufficient sight lines at three corners of C.N. Rys. crossing of Georgetown Road, mileage 22·2, Georgetown Subd'n.

52280. Sept. 26—Directing P.E.I. Dept. Public Works to remove old cheese factory obstructing view at crossing of C.N. Rys. at mileage 57·8, Tignish Subd'n.

52281. Sept. 26—Directing P.E.I. Dept. Public Works to establish sight lines in southwest corner and southeast corner of C.N. Rys. crossing at mileage 2·3, Murray Harbour Subd'n.

52282. Sept. 26—Directing P.E.I. Dept. Public Works to clean out trees on southeast corner of C.N. Rys. crossing known as Hancock Crossing, at mileage 30·2, Murray Harbour Subd'n.

52283. Sept. 26—Directing P.E.I. Dept. Public Works to clear away brush obstructing view at C.N. Rys. crossing at St. Nicholas, P.E.I.

52284. Sept. 26—Directing P.E.I. Dept. Public Works to remove obstructions to view and obtain and maintain easements at C.N. Rys. crossing at Five Houses, P.E.I.

52285. Sept. 27—Approving abandonment of that portion of Toronto, Hamilton & Buffalo Ry. known as Ridgeville Spur, extending from Ridgeville Jct. to a point in Lot 7, Con. 12, Tp. Pelham, Ont.

52286. Sept. 28—Directing P.E.I. Dept. Public Works to construct diversion of highway on north side of track connecting with C.N. Rys. crossing at mileage 6·5, Kensington Subd'n.

52287. Sept. 28—Directing P.E.I. Dept. Public Works to establish sight lines in southwest and southeast corners of C.N. Rys. crossing of Malpeque Road, mileage 7, Kensington Subd'n.

52288. Sept. 28—Directing P.E.I. Dept. Public Works to clear away brush obstructing view on northwest corner of C.N. Rys. crossing at New Annan, P.E.I.

52289. Sept. 28—Directing P.E.I. Dept. Public Works to remove hedge on northwest corner of C.N. Rys. crossing at mileage 3·8, Souris Subd'n (York Crossing).

52290. Sept. 28—Directing P.E.I. Dept. Public Works to clear trees and brush obstructing view at crossing of C.N. Rys. at Roseneath, P.E.I.

52291. Sept. 30—Directing C.N. Rys. to install two wigwag signals, in addition to bell, at crossing at Cook's Creek, N.B.

52292. Sept. 30—Directing Canadian National Rys. to install wigwag, in addition to bell, at crossing of King's Road, Sydney, N.S.

52293. Oct 1—Declaring C.N. Rys. crossing, fifth north of Chesley, Ont., protected to Board's satisfaction.

52294. Oct. 1—Declaring C.N. Rys. crossing two miles west of Thedford, Ont., protected to Board's satisfaction.

52295. Oct. 1—Amending Order 55267. Sept. 25, 1935, by striking out words "from Meyronne, at mileage 44·02, to Vanguard, at mileage 76·32" wherever they appear in Order and substituting therefor the words "from Vanguard, at mileage 44·02, to Meyronne, at mileage 76·32."

52296. Sept. 30—Directing P.E.I. Dept. Public Works to build up north approach to C.N. Rys. crossing of Mount Edward Road at mileage 3·15, Kensington Subd'n.

52297. Sept. 30—Directing P.E.I. Dept. Public Works to excavate material on northeast corner of C.N. Rys. crossing at Colville, P.E.I.

52298. Sept. 30—Directing P.E.I. Dept. Public Works to remove the clay in angle obstructing view at C.N. Rys. crossing at St. Louis, P.E.I.

52299. Sept. 30—Directing P.E.I. Dept. Public Works to build up approach on west side of C.N. Rys. crossing at Sherwood Station, P.E.I.

52300. Sept. 30—Directing P.E.I. Dept. Public Works to remove snow fence and hedge obstructing view at C.N. Rys. crossing of Brackley Point Road, mileage 0·9, Souris Subd'n.

52301. Sept. 30—Directing P.E.I. Dept. Public Works to build up approach to C.N. Rys. crossing at Union Station, P.E.I.

52302. Sept. 30—Directing P.E.I. Dept. Public Works to clear away brush at four corners of C.N. Rys. crossing at mileage 53·0, Souris Subd'n.

52303. Sept. 30—Directing P.E.I. Dept. Public Works to clear away brush and trees on all four corners of C.N. Rys. crossing of Wharf Road, mile post 0·6, Montague Subd'n.

52304. Sept. 30—Requiring C.N. Rys. to remove brush obstructing view at crossing at Blackburn, Co. Lake St. John West, Que.

52305. Sept. 30—Declaring C.P.R. crossing one mile south of Menaik, Alta., protected to Board's satisfaction.

52306. Oct. 1—Approving location and details of C.N. Rys. proposed freight shed to be erected at Guelph Junction, Ont.

52307. Oct. 1—Approving C.P.R. plan showing proposed alterations to signal layout at junction of Huntsville and Bala Subdivisions, at Washago, Ont.

52308. Oct. 1—Approving and authorizing clearances at C.N. Rys. siding to Ford Motor Co. of Canada, Ltd., at Danforth, Ont.

52309. Oct. 1—Requiring United Gas & Fuel Co., of Hamilton, Ltd., and Bell Telephone Co. to reconstruct, alter, or change their respective works in order to carry out changes in reconstruction of Locke street bridge, Hamilton, Ont., T.H. & B. Ry.; the City of Hamilton to lay and maintain asphalt or other pavement across floor and approaches to bridge; the T.H. & B. Ry. to make sidewalk adjustments at end of bridge, and provide concrete sidewalks and base of wearing surface of roadway on bridge and bridge ends; the T.H. & B. Ry. also to construct a footbridge to allow street passengers to transfer from car to car during construction of bridge.

52310. Sept. 27—Approving abandonment of portion of Kettle Valley Ry. known as North Fork Subd'n, from Westend to Archibald, B.C.

52311. Oct. 1—Directing P.E.I. Dept. Public Works to clear away brush and obtain sight lines in three corners of C.N. Rys. crossing at Suffolk Station, P.E.I.

52312. Oct. 1—Directing P.E.I. Dept. Public Works to clear up sight line on southeast corner of C.N. Rys. crossing at mileage 9·5, Kensington Subd'n.

52313. Oct. 1—Directing P.E.I. Dept. Public Works to clean away brush obstructing view at C.N. Rys. crossing at Darlington, P.E.I.

52314. Oct. 1—Directing P.E.I. Dept. Public Works to improve approaches to C.N. Rys. crossing at Five Houses, P.E.I.

52315. Oct. 2—Approving Buffalo & Fort Erie Public Bridge Authority's tariff C.R.C. No. A-5 (cancelling No. A-4) covering tolls to be charged for use of Peace Bridge between Fort Erie and Buffalo.

52316.

52317.

52318.

52319.

52320.

52321. Oct. 1—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls
52322. published in tariffs and supplements filed by the Dominion Atlantic Ry.
52323. under sec. 9.
52324. Oct. 4—Declaring C.N. Rys. crossing of Bernier Road, near St. Johns, Que., protected to Board's satisfaction.
52325. Oct. 5—Declaring Dominion Atlantic Ry. crossing, first west of Pereau Station, N.S., protected to Board's satisfaction.
52326. Oct. 5—Approving C.P.R. plan No. X-2-354/5, revised to Sept. 10, 1935, in lieu of said plan dated March 31, 1934, showing proposed automatic signal at crossing over C.N. Rys. Loop Line Transfer near Tillsonburg, Ont.
52327. Oct. 7—Authorizing Montreal & Southern Counties Ry's diverted line in the Parish of St. Paul d'Abbotsford, Que.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXV | Ottawa, November 1, 1935 | No. 16

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Application of the Canadian Pacific Railway Company for authority to abandon Kootenay and Arrowhead Railway, Lardeau Subdivision, Mileage 0 on Kootenay Lake, to Gerrard, Mileage 33·1.

File 39309.1

JUDGMENT

McLean, Assistant Chief Commissioner:

The branch line in question is the portion of the Kootenay and Arrowhead Railway, known as the Lardeau Subdivision of the Canadian Pacific Railway, between Lardeau and Kootenay Lake and Gerrard, and was incorported in 1901 and leased to the Canadian Pacific Railway for 999 years. In 1902 the line was constructed. The Subsidy Act, 1901, chap. 7, provides for a subsidy to this line of $3,200 a mile, not exceeding thirty miles unless the cost of construction exceeds $15,000 a mile, when a further subsidy, not, however, to exceed $6,400 per mile, could be granted.

Poor's Manual shows that the line was opened on August 1, 1902, and is controlled by the Canadian Pacific through ownership of $780,000 first mortgage bonds. The cost of the road is given by the same authority as $886,543.

This application has been looked into on the ground by representatives of the Board's Engineering Department and Operating Department, and report has been made. A hearing also has been held in the matter.

LOCATION

This branch line was constructed in 1902, and extends from Lardeau, B.C., at the north end of Kootenay lake to Gerrard at the south end of Trout lake, a distance of 33·1 miles. A steamer and barge service operating over Kootenay lake between Proctor, B.C., and Lardeau, B.C., provides connection between this branch line and the main line of the Canadian Pacific Railway at Proctor, B.C. The branch line under consideration follows the valley of the Lardeau river for its entire length. This valley is quite narrow and is hemmed in by a rugged mountainous division of the Selkirks.

PHYSICAL CHARACTERISTICS

At Lardeau, the southern terminal, there is a car-loading wharf which was rebuilt in 1930 at a cost of $8,000. The passenger wharf at this point requires

some new piles, stringers and caps. The cost of repairs would be in the neighbourhood of $600 to $1,000, and this work should be done this year. These facilities will be required irrespective of whether or not the railway is operated on this branch, since in any event it will be necessary for the railway to provide boat service to Lardeau. From Lardeau the line is located along the west shore of Kootenay lake, a distance of about three miles on a sidehill cut at the bottom of a steep mountain. This is a very bad spot for snow-slides, and a difficult portion to keep clear in the winter months.

From mileage 3 to mileage 11·3 the country is more level. The railway crosses the Lardeau river at mileage 11·3, and runs up the east bank of the river to mileage 20, where it again crosses. From mileage 20 to the end of steel is on the west side of the river through fairly easy country, and from Poplar Station, mileage 23, to the end of steel, the valley is heavily timbered. There are no marshes or muskegs and the line is located on a good foundation. There are 70-pound rails for 22 miles, and 56-pound rails for the rest of the distance. These rails, though old, are in fair condition. The surface and alignment is not bad, and the maximum grade is about 2 per cent, and the maximum curvature about 16 per cent.

Tie renewals will be roughly 500 per mile for 1935.

Ballast is poor but there is a certain amount of gravel in the earth formation which keeps the ties in place.

Maintenance of the line is poor. Cuts and fills are narrow, but as yet not dangerously so. Culverts seem to be in fair condition and have been built with native timber.

Bridges have been repaired and renewed within the past eight years and seem to be in fair condition. The principal bridges are as follows:—

Copper Creek, mileage 4—renewed in 1933. Appears to be in good shape.

Mileage 11·3—There is a 3-bent pile trestle on the south end and 150-foot timber Howe truss on pile piers, with an 8-bent pile trestle on the north end. A new truss was put in this bridge in 1920, and the new trestle approaches were constructed in 1933. They appear to be in good condition.

Mileage 20·0—There is a 3-bent trestle on the south end with 100-foot steel deck truss on framed piers with 6-bent trestle on the north end. Trestle approaches to the bridge were renewed in 1933, and piers seem to be in fair shape.

Mileage 22·9—There is a Howe truss rebuilt in 1920, which seems to be in fair shape.

Mileage 32·9—There is an 80-foot H.D.P. girder which seems to be in fair shape.

Difficulty has been caused in the past by the Lardeau river eating into the railway banks. The greatest difficulty in this connection has been experienced at mileage 9. There is not much chance of diverting the railway at this point, and the only way of meeting the situation appears to be to rip-rap the banks. This, however, is an ordinary maintenance charge.

The railway maintains a telephone line between Lardeau and Gerrard, and the ranchers are permitted to tap on to it where they desire.

Maintenance forces in winter consist of foreman only, located at Lardeau, and on occasions men are brought from Kaslo on train days to clean out switches. During the months of May, June and July there is a foreman and three men stationed at Gerrard.

DESCRIPTION OF THE AREA AFFECTED

In the valley through which the railway has been constructed there are eight ranchers who have small areas under cultivation and ship out a small quantity of dressed meats, vegetables and hay. In the area adjacent to Howser there are about four families located on small fruit ranches on Duncan lake,

two miles from Howser station. These ranchers are producing very little fruit at the present time. Two outfits are engaged in taking out fence posts and poles along the line. A good quality of marble is taken out at Marblehead station. This plant is idle at the present time. Many living in the valley and many residents of Kaslo and Nelson have mining interests in the surrounding hills, but none of these properties have been producing for some years. However, the interests connected with them speak in glowing terms of the possibilities of this mining area. They feel that due to the increased prices of gold and silver, this country is on the eve of another large mining development.

The population tributary to the line is so sparse and the business activities so limited that it is possible to give all details in this connection.

Lardeau.—Station facilities at this point consist of station building, section foreman's headquarters, siding and slip track with a 1,000-gallon water tank rebuilt in 1929, with gravity water supply. There is a 60-foot turntable at this point but the rest of the work is in bad repair. This is the only point on the line where an agent is employed. Business establishments consist of one general store, and the entire population is about nineteen.

Copper Creek.—Station facilities at this point consist of a small spur and a small shelter. There is one rancher at this point located about 1½ miles from the railway, and who owns 125 acres of land about 25 acres of which is under cultivation. He has six or seven cows and four horses. He has been on this farm for twenty-three years and estimates his investment between $6,000 to $7,000. He ships out dressed meat and vegetables to Kaslo.

Meadow Creek.—Station facilities at this point consist of a short spur, box-car shelter and a stock loading chute. There are fourteen people in this area, which includes six ranchers who cultivate about 120 acres of land all told. They have about 140 head of cattle and about 12 horses. It is stated that dressed meat and vegetables in small quantities are shipped to Nelson and Gerrard by these farmers.

Marblehead.—Station facilities at this point consist of passing track, two short spurs and small shelter. The Canadian Granite and Marble Company operate a marble quarry at this point. Their equipment consists of a shed about 150 feet by 50 feet in which is located their machinery for polishing marble. The plant is operated by steam. They have a boarding house and three small buildings to accommodate employees when the plant is operating. When operating to capacity they employ in the neighbourhood of fifteen men. At the present time the plant is shut down due to lack of demand for the product. During the year 1934 seven cars of marble were shipped from this plant.

Mileage 10·98.—There is a short spur here for shipping forest products.

Howser.—This station serves four or five families, with a total population of about thirty-three, who are engaged in fruit farming and mixed farming at Duncan lake, about two miles east of the railway. Only one of these fruit ranchers is operating at the present time. Mr. Geo. McGinnes, who is engaged in taking out poles from timber limits at Duncan river and Duncan lake, is using this station as a shipping point. He trucks from the water at Duncan lake to the railway, a distance of two miles, and loads on flat cars at this point. At the present time he employs about twelve men, and expects to be able to employ about twenty-five this summer. He started operations about a year ago and has shipped out about twenty-two cars of poles since that time.

Bosworth.—There is a small shelter at this point and no habitation.

Goldhill.—Station facilities at this point consist of a short spur and small shelter, also 10,000-gallon water tank with gravity supply. There is a small old hotel still being operated at this point.

Poplar.—There is a small station shelter at this point and the business establishments consist of one store. The entire population is about fifteen.

These people are mostly prospectors, and some of them are on relief. There is one rancher located in the valley here who has about twenty-five acres under cultivation, and who owns seventeen head of cattle and four horses.

Mileage 22·22 and 32·04.—There are two short spurs, one at each of these points, operated by Mr. Newcomen for loading forest products.

Gerrard.—Station facilities at this point consist of a wye, spur track to wharf on Trout lake, station building and section foreman's quarters. Business establishments consist of one small store. The entire population is about fifteen. There is an old abandoned sawmill which has not been operated for some years. The Dominion Government has a rather large fish hatchery at this point but this has been closed for the past four or five years and a caretaker is looking after the property.

TRAIN SERVICE

Each alternate Wednesday during the winter months commencing December 13, 1934, a mixed train is operated from Nelson to Gerrard, leaving Nelson at 11 p.m. This train is placed on the barge at Procter and taken by steamer, leaving Procter at 12.45 a.m. Thursday, calling at Kaslo en route to Lardeau where it arrives about 7 a.m., and leaves Lardeau about 8 a.m., arriving Gerrard 10.30 a.m. Returning it leaves Gerrard at 11 a.m., arriving Lardeau 2.15 p.m., at which point the train is again placed on the barge and returned to Procter, arriving about 9.45 p.m., and Nelson at 10.45 p.m. In addition to the above service a steamer is operated on Kootenay lake between Procter and Lardeau every Saturday, calling at Kaslo both ways. During the summer months a specially constructed track motor car provides passenger, mail and express service connecting with the Saturday boat at Lardeau, and while this service is in effect the steam train is operated only when there is carload traffic to move.

MAIL SERVICE

Mail service on this branch is provided by the railway and is arranged with whatever service the railway operates over the line.

HIGHWAYS

This area is without highway transportation. There is a road of sorts extending from Argenta on Kootenay lake to the west shore of Duncan lake (see plan). The people of Howser may cross the lake by boat and use the highway to Argenta, but the road is in poor condition and seldom used. It is not accessible to the rest of the district.

SUMMARY OBJECTIONS TO THE APPLICATION

The Kaslo Board of Trade strongly objected to this application. They based their claim for the retention of the line largely on the expected development in the gold mines, which it was hoped would start operations shortly in this area. They spoke of an English syndicate that had been approached for capital with a view to development of the Cromwell group property, which comprises eight gold mining claims located on Trout lake. They stated that this English syndicate was sending over a mining engineer this spring or early summer to look over this property, on whose report will depend whether or not capital will be forthcoming for the development of this property. They point out that if the railway is removed this deal will, of course, fall through, and they are of the opinion that if one mine starts operation in this area several will follow. They mention the Winslow group located in the same area as the Cromwell group and that negotiations are now taking place with an English syndicate with a hope of obtaining capital for the development of this property also. Both these properties are tributary to Eight Mile creek which flows into Trout lake, and Gerrard is the closest rail point. These properties were prospected during the war, at which time $60,000 to $70,000 was expended in

development work. Samples taken from these mines, they say, assay from 1 to 1½ ounces of gold per ton, and since at present gold prices half an ounce per ton is sufficient to make a gold property pay, these properties have, therefore, every indication of becoming producing mines.

Mr. Newcomen, who is engaged in taking fence posts and poles, has camps at Mileage 7, Mileage 10 and Mileage 32. At the present time he has only three men working, but stated that the business prospects were brighter at the present time than they had been for a number of years, and hopes to be able to dispose of a number of carloads of fence posts and poles this summer. He states that he has had more enquiry for his products this spring than at any time since the depression set in. He states that there is still about five years cut of timber on his limits. He places his investment in the neighbourhood of $25,000, and submits that if the railway is permitted to pull out he will be forced to go out with it since the railway provides the only means of transportation in this country.

Mr. McGinnes, who ships from Howser, states that he has received a contract from the railway company to supply them with 30,000 ties this year and expects to ship about sixty carloads of lumber and poles. He states that he has approximately $10,000 invested in timber limits and equipment in this area and has sufficient timber in sight to keep him operating for ten or twelve years. If the railway is allowed to abandon this branch line he states he will also have to discontinue operations.

Ranchers along the line pointed out that if the railway is allowed to be removed, they will be without any means of transportation and will, therefore, be unable to carry on.

It was the consensus of opinion of those interviewed that the snowfall in the area was so heavy during the winter months that even were the railway turned into a highway, this highway would soon become blocked with snow and the area would be entirely cut off from the outside world. They maintain that if the railway is taken out the people in the area will have to be taken out with it.

CONCLUSIONS

It will be observed that the entire population in this area is in the neighbourhood of about one hundred and twenty-five, and it would seem that these people are eking out a mere existence from the soil and the forest, but nevertheless all that they own is invested in this country, and most of them have been here since the mining boom which took place in 1903, and have held on with hopes of mining again becoming active. They are not producing sufficient tonnage to pay for the maintenance and operation of the railroad. It is a very expensive line to operate. Train crews and equipment have to be transported by rail and steamer from Nelson to Lardeau and back again. These crews are on continuous duty for about twenty-four hours, but only five or six hours of this time is consumed in making the run over the line. There must also be considered the cost of fighting snow. The Board's officers who travelled over the line find that in order to keep the line open during the winter months, a train with snow plow should be operated once a week or at least after every snow fall. If this is not done the snow packs, and the cost of opening the line becomes heavy and the task difficult.

It appears that if the railway is removed it would be doubtful if a satisfactory means of transportation could be obtained in its place.

On consideration of what is set out in the report which followed observation on the ground, and the result as developed at the hearing, I am of the opinion that the application of the railway should not be granted, and that the limited service which has been in operation should be continued.

October 11, 1935.

Concurred in by Commissioners Norris and Stone.

ORDER No. 52366

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 165 A of the Railway Act, for approval of the abandonment of operation of that portion of the Kootenay & Arrowhead Railway known as the Lardeau Subdivision, from Lardeau, mileage 0·0, to Gerrard, mileage 33·1, a distance of 33·1 miles:

File No. 39309.1

TUESDAY, the 15th day of October, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. McLEAN, *Asst. Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Nelson, B.C., July 20th, 1935, in the presence of counsel for and representatives of the applicant company, the Nelson Board of Trade, the Kootenay Cedar Company, and the Department of Public Works for the Province of British Columbia, and what was alleged; and upon the report of its Division Engineer and its Inspector,

The Board Orders: That the aapplication be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

Application of the Canadian National Railways for an Order granting leave to abandon the operation of that portion of its Iberville Subdivision, in the Province of Quebec, between St. Hyacinthe (Mile 50·0) and Bellevue Junction (Mile 81·3) a distance of 31·3 miles.

File No. 39310·10

JUDGMENT

GARCEAU, DEPUTY CHIEF COMMISSIONER:

The Canadian National Railways ask that that portion of the railway line formerly known as the "United Counties Railway" be abandoned, from the town of St. Hyacinthe as far as Bellevue Junction, a distance of 31·3 miles.

This application complements another asking that the operation of the line between St. Hyacinthe and Iberville (St. John) be discontinued; consequently, if these two applications were granted, this line constructed and known as the "United Counties Railway" would disappear completely.

The construction of this railway around 1895 was made possible by subsidies from the municipalities it crossed and from the Provincial Government which paid $300,000.

Those sacrifices were made at the time because the line was urgently needed, crossing as it did a region which, during several months in the year, had really no means of communicating with cities like Sorel and St. Hyacinthe, or even with Montreal and Quebec.

Even now, one may observe by the tourist map of the province of Quebec, filed by Mr. Fontaine, K.C., that there are no gravelled or macadamized roads in this district, yet. Old country roads are the only kind of roads in this region.

It was proved that there is no truck or bus service in operation in this district; furthermore, that only one farmer is known to have a truck for his personal use. The farmers have no automobiles; it is only in the villages that some of the inhabitants have this necessary means of transport.

I say "necessary" intentionally, because the service provided by the railway company, of trains going in one direction and returning the next day only, certainly is not convenient enough to meet the requirements of the travelling public of this community.

This railway line runs through several important parishes inhabited by industrious and energetic people, as was shown at the hearing. The depression, instead of discouraging and disheartening them, incited them to draw new resources from the soil, to cultivate it in a more rational and advantageous manner; for example, by growing potatoes and buckwheat, the cultivation of which has developed considerably of late.

Enterprising men sponsored the construction of warehouses to encourage the cultivation of these products and to prevent the population from migrating to the cities. Now that their efforts are beginning to show good results, that the population is justified in expecting more prosperous conditions, the Board is asked to grant leave to discontinue the railway service which is the only means of transport at the disposal of this community for its shipments to the markets not only of Sorel and St. Hyacinthe, but of Montreal and elsewhere.

The inhabitants of this locality have certainly proved to the Board that they have done their share during this period of depression to promote the return of normal prosperity to their own community and to the country and they feel justified in asking that the railway continue its operations even at a loss, because their energy and initiative have saved a greater loss to the country.

This line serves a population of approximately 40,000 and the discontinuance of its operation would cause such an economic confusion in this district that it would result in a general emigration to the cities, in much depreciation in the value of properties; probably, the country would have to bear a more substantial loss financially than the deficit it has to cover at present, not to mention the demoralization that would result if this population left the rural district to increase the number of unemployed in the cities.

It is shown by the evidence adduced that the line is essential to not only the economic life of this community but also for its social and religious activities. There are educational institutions in most of these villages. In St. Hyacinthe is located the residence of the Bishop who is the religious authority for these various parishes; moreover, there are some hospitals in St. Hyacinthe to which the sick of the surrounding district come for treatment. It was shown that the want of communications has in the past deprived scores of persons from being given the treatments necessary to save their lives, and if the railway line were abandoned, a number of these people might die from lack of the proper care and treatment.

If we take into account the whole inconvenience to be suffered by the public, we cannot but come to the conclusion that special circumstances prevail in this part of the country which has only the minimum railway accommodation necessary for its existence.

Can the Board, in order to save the sum of $30,000 yearly to the railway company, render a judgment that will annihilate the efforts and sacrifices made by this industrious and courageous population and provoke an economic crisis and an emigration to the cities and towns?

While the evidence has established that the inhabitants of these various municipalities have done all they possibly could to react against the depression, that they have patronized the railway as much as possible, it has not shown as plainly that the railway company had been providing that population with the service it required—which is the point the company needed to establish.

The train service provided by the railway company is as follows: On Saturday morning, the train leaves Sorel for St. Hyacinthe, and returns in

the evening. The next train is on Tuesday morning, for St. Hyacinthe also, but it returns to Sorel in the evening of the next day only. There is another train on Thursday morning which goes back in the evening of the same day.

The Saturday and Thursday trains allow the public to go to St. Hyacinthe and return the same day, but the third train—leaving on Tuesday and returning on Wednesday evening only—is of no use to business men.

Consequently, the actual train service accommodates only those who wish to go to St. Hyacinthe on Thursdays or Saturdays.

If the passenger earnings are not very high, it is due to the fact that there is no suitable train service to accommodate the public and not because other means of transport are being used—no other kind of service is available.

Trains running at such long intervals cannot carry perishable commodities like milk or farm products which require a daily train service.

Can the railways, without incurring larger deficits, give the public a more regular passenger train service, by using lighter and less expensive equipment? That is their own problem: I believe that with good-will on their part, in accordance with the axiom which says: "If you will, you can" without increasing their maintenance costs—their heaviest expense—they could increase their revenues.

I must congratulate the railway company's Counsels on the able manner in which they have made their case before the Board. The representatives of those who have been entrusted by the Government of this country with the management of our national railways, appeared before the Board and exposed their viewpoint, stated the losses suffered in the operation of the line, because, in their opinion, it was in the public interest that the line be abandoned.

The evidence adduced has determined that they were misinformed, more particularly in connection with the means of communication and transport at the disposal of the various parishes located along the line, and this explains the last part of Mr. Rand's replication, viz.:—

> "It is a balancing of one form of inconvenience to the public as against another. I agree that the conditions here are somewhat different from what they are at other points. That is a matter for the Commission; and, in view of the fact that all features of the economic and social life have been fully developed in the hearing, I do not know that there could be much purpose in dealing with it further. I quite agree that in winter and spring there is going to be substantial inconvenience to the public. Whether or not that is of such magnitude as to outweigh the heavy loss on this railway is a difficult question to determine and I do not envy you for having imposed upon you the duty of determining it."

As it was so well put by Mr. Rand, the Board is the tribunal created by the Government of this country and charged with the responsibility of deciding what is in the public interest. In order to perform this duty, the Board has not only the right but the obligation to seek its information not merely from the record but also from any other possible source.

The several witnesses heard by the Board at the sittings have shown the members of this tribunal the public spirit that animates the inhabitants of this section of the country, their initiative, and the absolute necessity of the line for their commercial, social and religious activities.

I shall not deal with the question of Provincial and Municipal subsidies because, at the time the railway was bought by the Canadian National Railways, in 1929, the obligations assumed in consideration of the subsidies paid had been annulled and revoked by two sales under judicial authority, one in 1900 under the authority of a judgment of the Superior Court, made by the Sheriff, and the other under the authority of a judgment of the Exchequer Court of Canada.

Because of those two sales and since the interested parties have taken no action to preserve their rights, all obligations or privileges have been annulled.

I would dismiss the application.

October 11, 1935.

Commissioner Norris: I concur in the final conclusions reached by the Deputy Chief Commissioner that the application of the Railway Company should be dismissed.

October 18, 1935.

Commissioner Stone concurred.

Requête de la compagnie des chemins de fer Nationaux du Canada, demandant à ce qu'une ordonnance soit rendue l'autorisant à discontinuer l'exploitation de sa ligne de chemin de fer, partie de sa sub-division d'Iberville, dans la province de Québec, entre St-Hyacinthe (mille 50·0) et la Jonction Bellevue (mille 81·3)—un parcours de 31·3 milles.

Dossier N° 39310.10.

JUGEMENT

Garceau, Commissaire en chef suppléant:

Les chemins de fer Nationaux du Canada demandent que cette partie de la voie ferrée autrefois connue sous le nom de "des Comtés-Unis" soit abandonnée depuis la ville de St-Hyacinthe jusqu'à la jonction de Bellevue, une distance de 31.3 milles.

Cette demande est le pendant de celle qui demande la suppression de la voie ferrée entre St-Hyacinthe et Iberville (St-Jean), de sorte que si ces deux requêtes étaient accordées, cette voie ferrée autrefois bâtie et connue sous le nom de "Chemin de fer des Comtés-Unis" cesserait complètement d'exister.

Ce chemin de fer a été construit vers 1895, grâce à des subsides payés par les municipalités traversées par ce chemin de fer et par le gouvernement provincial qui a payé $300,000.

Ces sacrifices ont été faits dans le temps parce que le chemin de fer répondait à une nécessité pressante et traversait une région qui n'avait réellement pendant plusieurs mois de l'année, aucune communication possible avec des cités comme Sorel et St-Hyacinthe et même Montréal et Québec.

Aujourd'hui encore, il est possible de constater par la carte routière de la province de Québec, produite par monsieur Fontaine, C.R., que cette région n'a encore aucun chemin gravelé ou macadamisé. Les vieux chemins de terre d'autrefois sont les seuls qui desservent cette région.

Il a été établi qu'il n'existe aucun service de camions ou d'autobus dans cette région; bien plus, on ne connaît qu'un cultivateur qui aurait un camion pour son usage personnel. Les cultivateurs ne sont pas pourvus d'automobiles; il n'y a que dans les villages où quelques-uns des citoyens ont ce moyen nécessaire de transport.

Je dis "nécessaire" à dessein parce que le service qui est donné par le chemin de fer, dont les convois ne circulent que dans une direction pour ne revenir que le lendemain, ne donne certainement pas des avantages qui permettent à cette population de voyager quand elle en a besoin.

Cette voie ferrée passe à travers plusieurs paroisses importantes, habitées par des personnes industrieuses, énergiques, ainsi qu'il a été établi à l'enquête.

La crise, la dépression, au lieu de les atterrer, de les décourager, les a plutôt incités à tirer du sol de nouvelles ressources, à l'utiliser d'une manière plus

rationnelle et plus avantageuse, comme par exemple, la culture de la pomme de terre, du sarrasin, qui a pris de grandes proportions dans cette région depuis quelque temps.

Des hommes entreprenants ont construit des entrepôts afin de favoriser ces cultures et d'empêcher un exode de la population vers les grands centres. Aujourd'hui que ces efforts commencent à donner certains résultats, que cette population se croit en état d'espérer une prospérité relative, on demande la suppression du chemin de fer qui est le seul moyen de transport à sa disposition pour que les divers produits de l'industrie et des fermes de cette région puissent atteindre les marchés non seulement de Sorel et de St-Hyacinthe mais de Montréal et d'ailleurs.

Les habitants de cette région ont certainement établi devant la Commission qu'ils ont fait leur quote-part dans cette crise pour aider leur région et le pays à un retour à une prospérité normale et ils se croient justifiés de demander que le chemin de fer continue ses opérations même si c'est à perte, parce que leur énergie, leur esprit d'entreprise, auraient sauvé au pays une perte financière plus grande.

Le chemin de fer dessert une population d'environ 40,000 âmes et sa suppression causerait un tel désarroi économique dans cette région qu'il y aurait une forte émigration vers les villes, une dépréciation considérable dans la valeur des propriétés et le pays souffrirait probablement économiquement une perte plus grande que le déficit qu'il est obligé aujourd'hui de combler, sans compter le désarroi moral qui résulterait de la désertion de cette région et de la multiplication des travailleurs sans emploi dans les villes.

La preuve établit que ce chemin de fer est non seulement nécessaire pour la vie économique de cette région mais aussi pour la vie sociale et religieuse. Des institutions d'enseignement existent dans la plupart de ces villages. St-Hyacinthe est la résidence de l'Evêque duquel dépend la vie religieuse de toutes ces communautés ; en outre, à St-Hyacinthe, il existe des hôpitaux qui reçoivent des malades de cette région.

La preuve établit que le manque de communication par chemin de fer aurait privé dans le passé quantité de personnes de recevoir les traitements nécessaires pour assurer leur vie et supprimer le chemin de fer serait donc exposer quantité de personnes à mourir faute de soins appropriés.

Si l'on considère l'ensemble des inconvénients que le public aurait à souffrir, on ne peut conclure autrement que cette partie du pays se trouve dans des conditions spéciales et n'a que le minimum possible de moyens de transport pour assurer son existence.

La Commission peut-elle et doit-elle rendre un jugement qui mettrait à néant les efforts et les sacrifices que s'est imposés cette population, si industrieuse et courageuse, provoquer une dépression économique, une migration vers les villes et cités, pour sauver au chemin de fer une dépense annuelle de $30,000.

Si la preuve a démontré que les habitants des différentes municipalités ont tenté de réagir dans la mesure du possible contre la dépression, encouragé les chemins de fer autant qu'il était en leur pouvoir, elle n'est pas aussi positive à démontrer que le chemin de fer a donné à cette partie de la population les moyens de transport nécessaires pour aider à l'initiative personnelle et s'assurer par là un plus gros revenu, preuve que les chemins de fer devaient faire.

Le service de trains fourni par le chemin de fer est le suivant: Le samedi matin, le train part de Sorel pour se rendre à St-Hyacinthe et retourne le soir. Le train suivant est celui du mardi matin, toujours pour St-Hyacinthe, mais ne retournant à Sorel que le lendemain soir. Le jeudi matin, il y a un train qui retourne le même soir.

Les trains du samedi et du jeudi donnent certainement l'avantage au public de se rendre à St-Hyacinthe et de retourner le même jour, mais le troisième train qui part le mardi et ne revient que le mercredi ne peut être utilisé par les hommes d'affaires.

Il n'y a donc que ceux qui veulent aller à St-Hyacinthe le jeudi et le samedi qui peuvent profiter des trains actuels.

Quant à ceux qui veulent aller à Sorel, il leur faut nécessairement coucher là tous les jours.

Si les recettes de passagers ne sont pas abondantes, c'est parce qu'il n'y a pas le service voulu et non pas parce que les passagers se servent d'autres moyens de transport—il n'y en a pas.

Un service de train aussi espacé ne peut recevoir les marchandises périssables comme le lait et les autres produits de la ferme qui demandent un service quotidien.

Les chemins de fer peuvent-ils, sans encourir un plus grand déficit, organiser des services de passagers plus réguliers et au moyen de trains légers et peu dispendieux?

C'est leur problème; s'ils y mettaient toute la bonne volonté voulue, en vertu de l'axiome qui dit: "Qui veut, peut", je crois que, sans augmenter leurs dépenses d'entretien de la ligne, qui est la dépense la plus considérable, ils pourraient s'assurer des revenus nets plus considérables.

Toutefois, je dois féliciter les avocats du chemin de fer de la manière dont ils ont exposé la cause devant la Commission. Les représentants de ceux qui sont chargés par le gouvernement de ce pays d'administrer les chemins de fer du Canada sont venus devant la Commission, ont exposé leur manière de voir, les pertes subies dans l'exploitation du chemin de fer, demandant la suppression de cette partie de cette ligne parce que, dans leur opinion, l'intérêt du public l'exigeait.

La preuve a démontré qu'ils étaient mal renseignés quant aux moyens de communication et de transport dont jouissaient les différentes paroisses échelonnées le long de ce chemin de fer et ceci explique la dernière partie de M. Rand qui est à citer: (Traduction)

> "C'est une mise en équilibre d'une condition d'incommodité pour le public contre une autre. J'admets que les conditions ici sont un peu différentes de celles qui existent en d'autres endroits, et c'est là une question que la Commission devra mettre à l'étude. Mais en vue du fait que la question des conditions sociales et économiques a bien été exposée devant la Commission sous tous ses aspects lors de l'audition, je ne sache pas qu'on pourrait en tirer beaucoup de profit en traitant davantage de cette question. J'admets que durant l'hiver et au printemps le public puisse se trouver en face de graves inconvénients; mais quant à savoir si oui ou non cet état de choses est d'une telle importance pour l'emporter sur la question de pertes considérables dans les revenus du chemin de fer, est un problème difficile à résoudre, et je n'envie pas la tâche de ceux qui sont obligés de le faire."

Comme l'a si bien dit Me. Rand, la Commission des chemins de fer est le tribunal créé par le gouvernement de ce pays chargé de la responsabilité de rendre une décision qui sera dans l'intérêt public.

La Commission afin de remplir son devoir a non seulement le droit mais le devoir de prendre ses renseignements non seulement dans le dossier qui lui est soumis mais aussi à toute autre source possible.

Les nombreuses personnes entendues par la Commission lors de l'audition ont démontré aux membres de ce tribunal l'esprit public de cette région, leur esprit d'entreprise, aussi la nécessité du chemin de fer pour leurs besoins économiques, sociaux et religieux.

Je ne touche pas à la question des subsides provinciaux et municipaux, parce que, lors de l'achat du chemin de fer par le Canadien National, en 1929, les obligations imposées au chemin de fer à cause de ces subsides avaient été annulées et radiées par deux ventes sous autorité de justice, l'une en 1900

sous l'autorité d'un jugement de la Cour Supérieure faite par le shérif et l'autre sous l'autorité d'un jugement de la Cour de l'Echiquier du Canada.

A cause de ces deux ventes et l'absence de toute procédure par les parties intéressées pour conserver leurs droits, toutes charges ou privilèges ont été purgés.

Je renverrais la requête.

Le 11 octobre, 1935.

Le Commissaire Norris: Je me rallie aux conclusions finales auxquelles en est arrivé le Commissaire en chef suppléant, à savoir, que la requête de la compagnie du chemin de fer devrait être refusée.

Le 18 octobre, 1935.

Le Commissaire Stone s'est rallie au jugement ci-dessus.

ORDER No. 52371

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 165A of the Railway Act, for approval of the abandonment of operation of a portion of their Iberville Subdivision, between St. Hyacinthe and Bellevue Junction, in the Province of Quebec, mileage 50·0 to 81·3, a distance of 31·3 miles.

File No. 39310.10

Saturday, the 19th day of October, A.D. 1935.

Hon. Hugh Guthrie, K.C., *Chief Commissioner.*
F. N. Garceau, K.C., *Deputy Chief Commissioner*
Hon. T. C. Norris, *Commissioner.*
G. A. Stone, *Commissioner.*

Upon hearing the application at the sittings of the Board held at St. Hyacinthe, May 15, 1935, in the presence of counsel for and representatives of the applicants, the province of Quebec, the village of Massueville, the parish of St. Jude-de-St. Ours, the city of St. Hyacinthe, and the parish of St. Barnabe, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52316

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

Tuesday, the 1st day of October, A.D. 1935.

Hon. Hugh Guthrie, K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in item 111D of Supplement No. 88 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 88 to Tariff C.R.C. No. 856, approved herein, are as follows:—

To	Cents per 100 pounds Bituminous Coal	Anthracite Coal
Windsor, N.S.	6	7
Wolfville, N.S.	5¼	6
Port Williams, N.S.	4¾	6
Kentville, N.S.	4½	5¾
Berwick, N.S.	5¾	6¼
Kingston, N.S.	6	7
Middleton, N.S.	7	7¾
Bridgetown, N.S.	7¼	8½
Annapolis, N.S.	7¾	9
Digby, N.S.	8¼	9
Church Point, N.S.	9	10
Meteghan, N.S.	9¾	10½
Scotch Village, N.S.	7	7¾
Kennetcook, N.S.	7¼	8½
South Maitland, N.S.	7¾	9½
Truro, N.S.	8¼	9

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52317

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 1st day of October, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 41 of Supplement No. 89 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 89 to Tariff C.R.C. No. 856, approved herein, is 22 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52318

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 1st day of October, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 4 of Supplement No. 4 to Tariff C.R.C. No. 879, filed by the Dominion Atlantic Railway Company under section 9 of

the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 4 to Tariff C.R.C. No. 879, approved herein, is 5½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52319

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 2nd day of October, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published from Stanley, N.S., to Windsor, N.S., in item 244-A of Supplement No. 22 to Tariff C.R.C. No. 906, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 22 to Tariff C.R.C. No. 906, approved herein, is 4½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52320

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 2nd day of October, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published from Port Williams, N.S., in item 242 of Supplement No. 23 to Tariff C.R.C. No. 906, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 23 to Tariff C.R.C. No. 906, approved herein, is 5 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52321

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 2nd day of October, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 975, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normals tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 975, approved herein, are as follows:—

From	Cents per Barrel.
Annapolis Royal, N.S Bridgetown, N.S	50
Middleton, N.S Kingston, N.S	44
Berwick, N.S Weston, N.S Kingsport, N.S	37½
Kentville, N.S.	32½
Port Williams, N.S.	31½
Horton Landing, N.S.	29
Hantsport, N.S.	27½
Hartville, N.S.	25

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52322

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 2nd day of October, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 977, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 977, approved herein, are as follows:—

	Cents per 100 pounds.
Item 1..	35½
Item 2..	47½
Item 3 to	
Guelph, Ont..	45½
Simcoe, Ont..	45
Toronto, Ont..	40½

1½ cents per 100 pounds to be deducted account of water haul.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52323

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 2nd day of October, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 978, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 978, approved herein, are those in effect from Halifax, Nova Scotia, prior to July 1, 1927; 1½ cents per 100 pounds to be deducted from normal rates account of water haul.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52327

In the matter of the application of the Montreal & Southern Counties Railway Company, hereinafter called the "Applicant Company," under section 276 of the Railway Act, for authority to open for the carriage of traffic, its diverted line of railway in the Parish of St. Paul d'Abbotsford, Province of Quebec, authorized under Order No. 52248, dated September 16, 1935.

File No. 12072.38

MONDAY, the 7th day of October, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

It is ordered: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic the said diverted line in the Parish of St. Paul d'Abbotsford, province of Quebec.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52329

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 330 of the Railway Act, for approval of Supplement No. 1 to Standard Freight Mileage Tariff C.R.C. No. E-1210, on file with the Board under file No. 548.32.

TUESDAY, the 8th day of October, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the said Supplement No. 1 to the applicants' Standard Freight Mileage Tariff C.R.C. No. E-1210, on file with the Board under file No. 548.32, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette.*

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52350

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 165A of the Railway Act, for approval of the abandonment of operation of that portion of their Iberville Subdivision, in the Province of Quebec, between Iberville (mileage 21·9) and St. Hyacinthe (mileage 50·0), a distance of 28·1 miles.

File No. 39310.8

MONDAY, the 9th day of September, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at St. Hyacinthe, Quebec, May 15, 1935, in the presence of counsel for the railway company, no one appearing in opposition,—

It is ordered: That the abandonment of operation of that portion of the applicants' Iberville Subdivision, in the province of Quebec, between Iberville (mileage 21·9) and St. Hyacinthe (mileage 50·0), a distance of 28·1 miles, be, and it is hereby, approved; such approval to be without prejudice to the rights or remedies of the parties, if any, in the courts.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52363

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for leave to eliminate, upon less than statutory notice, Colborne, Ontario, from its Tariff C.R.C. No. E-4746, a point at which collection and delivery service is performed.

File No. 27612.124

THURSDAY, the 17th day of October, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that the applicant company is unable to arrange for collection and delivery service at Colborne, Ontario,—

It is ordered: That the applicant company be, and it is hereby, permitted to publish and file, on three days' notice, an amendment to its Tariff C.R.C. No. E-4746, eliminating Colborne, Ontario, as a collection and delivery point.

H. GUTHRIE,
Chief Commissioner.

GENERAL ORDER No. 543

In the matter of the application of Maurice A. Knight, of Akron, Ohio, for permission to use rubber drums for the transportation of certain acids by freight over railways in Canada.

File No. 1717.38.3

MONDAY, the 21st day of October, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that a revision of the regulations for the transportation of explosives and other dangerous articles by freight over railways in Canada is now in progress, and its being expedient that provision be made for the use of the said rubber drums prior to such revision, the Railway Association of Canada consenting,—

It is ordered: That rubber drums complying with Container Specification 43A, published in Agent B. W. Dunn's Supplement No. 9 to Tariff C.R.C. No. 2, effective November 1, 1935, on file with the Board, but with markings in which the letters "C.R.C." are substituted for "I.C.C.," as shown in the specifications, be, and they are hereby, authorized for use in shipping the classes of freight permitted by the said tariff to be shipped in such containers over railways in Canada subject to the jurisdiction of the Board.

H. GUTHRIE,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR JULY, 1935

Railway accidents	216,	with 21	persons killed and	218 injured
Railway accidents at highway crossings	17,	with 9	persons killed and	23 injured
	233	30		241

	Killed	Injured
Passengers	..	53
Employees	2	138
Others	28	50
	30	241

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents	
	Nova Scotia
1	Automobile—Driver attempted to beat train. Licence N.S. 62473.
1	Automobile—Excessive speed of auto. Licence N.S. 86-966.
1	Auto truck—Driver failed to see or hear train. Licence N.S. C-13-432.
	Quebec
3	Automobile—Driver failed to stop for crossing. Que. licences H-27185; 94257; (1 not given).
1	Auto truck—Driver failed to stop for crossing. Que. licence 1864.
	Ontario
2	Automobile—Driver failed to see or hear train. Ont. licences NR-851; HH-992.
1	Automobile—Licence Ontario HK-41.
1	Auto truck—Defective brakes on truck. Licence Ontario 49832-C.
1	Auto truck. Licence Ont. No. 9495-C.
	Manitoba
1	Auto truck—Failed to see or hear train. Licence Man. 22763.
	Saskatchewan
1	Automobile—Driver failed to see or hear train. Licence Sask. 61-122.
	British Columbia
1	Automobile—Driver attempted to cross track ahead of train. Licence B.C. 61-581.
1	Automobile—Auto ran into side of train. Licence No. not given.
1	Auto truck—Driver failed to see or hear train. Licence No. not given.

Of the 17 accidents at highway crossings, one occurred at a Protected crossing and the remainder at Unprotected crossings. Fifteen of the accidents occurred during the daylight hours and two at night.

Ottawa, October 11, 1935.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXV Ottawa, November 15, 1935 No. 17

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Application of the Canadian National Railways for an Order granting leave to abandon the operation of its Frelighsburg Subdivision, in the Province of Quebec, between Farnham, mileage 18·4 and Frelighsburg, mileage 0·0, a total distance of 18·4 miles.

File No. 39310.1.

JUDGMENT

GARCEAU, DEPUTY CHIEF COMMISSIONER:

An application was made under section 165-A of the Railway Act and section 2 (3) of the Canadian National-Canadian Pacific Act, 1933, and all other appropriate statutory provisions, for an order granting leave to abandon the operation of the following line of railway, namely, the portion of its line between Farnham, mileage 18·4, and Frelighsburg, mileage 0·0, a total distance of 18·4 miles.

The train service during the last four years has consisted only of occasional freight service necessary to meet the requirements. Last year, 1934, it consisted of fifty round trips. These trips were made as part of the service between Waterloo and Montreal. Waterloo lies to the east of Granby. The train leaves Waterloo, passes through Granby, comes to Farnham and then runs once a week, generally on Saturdays to Frelighsburg and back to Farnham that day, and then completes its run to Montreal. There has been no passenger service. It has been established by the railway that the total revenue from this system was $33,656 from May 1, 1930, to April 30, 1931. The expenses that were charged against that line were $36,670, a net loss in that year of $3,000 approximately.

A brief historical review of the line to be abandoned reads as follows:—

"Opened for operation—1882 (Abandoned in 1883 and again put into operation in 1901).

"Built under Statutory Authority:—Quebec Acts, 35 Vic. Chap. 29, and 37 Vic. Chap. 24; Canada Acts, 38 Vic. Chap. 70, and 59 Vic. Chap. 26.

> "The Missisquoi Junction Railway Co. incorporated in 1869, Quebec Act 35 Vic. Chap. 59, and the Montreal, Chambly and Sorel Ry. Co. incorporated, Quebec Act 35 Vic. Chap. 29, were amalgamated in 1874, Quebec Act 37 Vic. Chap. 24. By Act of Canada, 38 Vic. Chap. 70, the name was changed to the Montreal, Portland and Boston Railway Com-

pany. In 1896, the Montreal and Province Line Ry. Co. was incorporated and vested with the property of the Montreal, Portland and Boston Railway Company. The Montreal and Province Line Railway is operated under lease by Canadian National Railways and has been since November 1, 1923."

The line asked to be abandoned serves the localities of Farnham, Guerin, Durocher, Stone, Riceburg, Stanbridge East, Hunters Siding and Frelighsburg.

Mr. Rand for the railway contends that the only municipality which would be really inconvenienced would be Frelighsburg at the extreme southerly end of the line. It is located ten miles from Bedford, the nearest railway station. There is a good road between Frelighsburg and Bedford, but this road is not open nor maintained for trucks or buses in winter.

This application was opposed by interested municipalities and numerous witnesses were heard to support these submissions.

Mr. Shepherd, Mayor of Frelighsburg said: "There is as much stock and feed handled for that eastern country to-day as there was in 1915, and I think if they refer back they will find that it was a paying proposition. We must add to that around 3,000 cords of wood. Of course, now that goes by truck. Besides, there is an apple industry coming on; 35,000 trees have been planted. Fertilizers are brought on account of these new orchards.

The mayor said he knew that daily service was impossible naturally, but the railway was necessary to handle heavy freight. He suggested that smaller trains might be used. He added that municipal subsidies were paid to the railway for its construction, maintenance and operation, to the amount of $20,000.

He complained also that the dairy industry as far as milk was concerned suffered from the lack of railway service. In summer to haul by truck to Montreal would injure the milk. In winter, they are obliged to haul it for ten miles to Bedford and very often it freezes. In consequence of which, the milk industry has been greatly injured.

There is also a certain quantity of feed coming from the West to Montreal, and on account of the poor railway service, it is brought there by truck.

Mr. Murphy, Mayor of Stanbridge, established that there was a rather heavy traffic existing, but on account of only one train a week, it was done mostly by trucks and buses.

Mr. Pickel, M.P., expressed the opinion that the different cars, buses and motor trucks should be controlled. There is a good deal of traffic available in this section of the country for the railway if they were not handicapped by trucks. He contended that "the trucks are not making any money, are running at a loss, but it is very popular to get behind a wheel and drive a car, and lots of fellows manage to get hold of a truck and run it for a year or two until it is out of commission. The truck business should be controlled," and having this idea in mind, he asked that the edict of abandonment be postponed. Mr. Pickel insisted that it was the feeling all through the country that there should be some control over the trucks, and he added there is no question that it should be done.

To the question made by Mr. Rand: "Would you raise the rates on the trucks?

"A. I would raise the rates on the trucks. I would have a uniform rate.

"Up or down?

"A. Well, I think the truck business should be up.

"Q. Do you think the public would go along with that?

"A. I think they would have to."

In answer to a question by Commissioner Norris, Mr. Pickel said: "Well, if the truck business is uncontrolled, the outlook for the railways will be bad."

The evidence given by Mr. Deslongchamps is important:—

"I have a farm at Frelighsburg and am the agriculturist of the Model Orchards and am responsible for the commencement of an enterprise which will soon have about 50,000 trees in production. This year we shall begin to have a small crop. Without the railway it would be almost impossible to ship a product of some 400 cars of apples a year and bring in the chemical fertilizers required for these trees. They would require some ten cars.

"Railway facilities were a determining motive in the establishment of the Model Orchards and in the choice of a number of our friends of properties at Frelighsburg. We wish to extend our activities in assisting the farmers of the district in the shipping of mill feeds and chemical fertilizers in co-operation with our society. Recently, since the spring, we had to ship about six cars of feeds of which the farmers were in need when the highways were practically impassable for trucks. It is our purpose to build a warehouse in the village, to have a central plant for the sorting and classifying of apples, and we were counting absolutely on railway facilities to ship to the cold storage plants in Montreal fruit for the great markets. Carrying it by truck can only result in considerable damage to the fruit.

"I am absolutely certain that if the railway company would take the trouble to secure the patronage of the farmers, the merchants and shippers of wood, instead of patronizing the trucks, the railway would obtain three times the revenue necessary to cover the deficit in this line of railway."

He assumes that if this line is abandoned, the railways will deprive themselves of considerable revenue which would compensate their actual loss.

Mr. Methé, wood dealer, of Frelighsburg, said:—

"My opinion is that if this railway is taken away, our business would be reduced from 50 to 70 per cent perhaps 100 per cent. My business has increased. I have shipped this year 35 to 40 cars of wood."

Sometimes he is obliged to ship by truck because clients cannot wait for the weekly railway service, but all his trade goes by railway when possible. He was prevented from selling 150,000 feet of maple wood because he was not sure he would be able to make delivery, being afraid that the railway service would be completely abandoned. This witness declares that the truck operators are doing it at a loss, and that even owners of trucks used for their own transportation do not make twenty-five cents a day. He claimed that even the owners of the trucks cannot make a living out of transportation.

The evidence of Mr. J. F. Roy of the Agricultural Department, Frelighsburg: He has a farm at Frelighsburg, planted with apple trees. The apple industry in the near future will give an important trade to the railways and in order to carry fruit in proper order to Montreal, the railways are a necessity. The tansportation by trucks would injure the fruit. He is of the opinion that unless the railways continue their service, this apple industry will vanish from Frelighsburg and, as for himself, he would sell his farm and orchard. Mr. Deslongchamps and Mr. Roy insisted that if the railways would go for trade and give the service required by trade, they would have no deficits. Mr. Roy claims that the new rates are cheaper than the trucking costs. He claims that many trucks have abandoned the service since last year on account of these lower rates. There was a truck that used to come to and from St. Guillaume four times a week. It has been abandoned since on account of these cheaper rates.

Mr. Roy: "You stick to your tariffs; if you had another method of fixing your tariffs, it would be the end of all these trucks. Your

procedure is bad. I would suggest the elimination of class tariffs. You know that some of the directors of your organization at Montreal condemn this classification tariff. There are men in high positions in your organization who have worked upon the classification and condemn it. By these tariffs the truckers are favoured."

Mr. Darveau, for the railway, contended that the question of tariffs had nothing to do with the present hearing.

The evidence filed establishes without any doubt that if the railway could secure all the traffic of that region, it would not have any deficit and I believe it is safe to say that it is of necessity for this section of the country that the actual service be maintained.

As aforesaid, the rate question was submitted by several witnesses. Objection was taken by the railway company's counsel on the ground that this is not a rate issue. I believe that objection must be dismissed. The railways, when they ask to abandon a line or part of a line of railway, must establish not only that they suffer deficits but also that, no matter what facilities as to service and rates they provided, deficits would still be incurred and that public weal would be better served by the abandonment.

It must not be forgotten that *the railways are a public service, were built or heavily subsidized by public moneys; that they are implicitly or formally under contract to serve the public, even at a loss. Those subsidies were not paid only to permit the shareholders to draw dividends but also to take the risks of loss.*

The Board of Railway Commissioners is the authority constituted by Parliament to see that the railways fulfil their obligations towards the public, give the proper service and it is unquestionably the right of the Board to be informed of any reason why the abandonment should not be allowed.

If this proposition were not true, the railways virtually would have the discretionary power to abandon any line and it would be left to them to create conditions which would bring deficits.

I do not mean to suggest that the railways would intentionally bring about such conditions, but only that the Board, having the control over the operations of the railway, being the authority charged with the responsibility of protecting the public, can have in certain circumstances a better understanding of what is to be done in the interest of the public and the railways.

The Board in rendering a decision has also the right to consider not only what has developed on the file or at the hearing but also any other knowledge that it may have acquired.

There is much traffic in the territory served by the line which it is desired to abandon, and orchards that are just beginning to bear fruit will increase the traffic for the railways. It is estimated that in the near future around 400 cars will be required yearly for shipments of apples and fertilizers.

It has also been shown that much of the traffic of fruits, milk and other commodities cannot be carried conveniently by trucks.

The community concerned is a thriving one, railway minded and was compelled to find other means of transport owing to lack of proper railway service, but the substituted facilities have proven unsatisfactory on the whole.

The railway company has not proven that, even under existing conditions, with unfair truck competition, they could not improve their revenues. They have simply given way to competitors although they had received subsidies from the Federal government and the municipalities for specific train operations.

This part of the country has a thriving population which, since the depression has striven earnestly to bring about recovery, by improving production, by planting orchards, developing a market for raw products, etc.

The possibility for the railway to improve its revenues to a point of profit is demonstrated by the results of operations for 1931-32, the last year during which the company gave a regular service. Even during that period of acute depression, the revenues of the railways were $33,657 and the expenses charged against the line were $36,370, a net loss of only $2,714. If we look into the record we find that, since that time, production in this section of the country has increased and, it is expected, will continue to increase in the future.

When the company began to give only a weekly freight service, the population was obliged to look for other means of transport. Every witness heard in this case has declared that the motor vehicle service is not satisfactory for most commodities, and of absolutely no use for some of them. Moreover, some of the truck-owners are discontinuing their service. (Mr. Roy's evidence); most of them are not making any money and will be put out of business if proper service and cheap rates are provided by the railways.

The service actually given by the railway is a freight train running once a week from Waterloo to Granby and then to Farnham, and from Farnham running to Frelighsburg, returning to Farnham, then to Montreal.

The revenues for 1933 were less than $5,000 and the expenses were $17,059, a net loss of $12,376. This shows that the railway did not improve its situation by curtailing its service to a minimum and it confirms the opinion that a regular and proper service is the only remedy; because if, in 1931, a regular service resulted in a loss of only $2,714 when traffic was much lighter than it is now, it is logical to assume that this deficit of 1931 would have meant a surplus in 1934 and 1935. Besides, the farmers of Frelighsburg and other municipalities and the trade of the region as a whole would have profited by the service.

I would dismiss the application.

September 12, 1935.

Application of the Canadian National Railways for an Order granting leave to abandon the operation of its Frelighsburg Subdivision, in the Province of Quebec, between Farnham, mileage 18·4 and Frelighsburg, mileage 0·0, a total distance of 18·4 miles.

File 39310.1

Commissioner Stone:

I am not in agreement with certain observations made by the Deputy Chief Commissioner in his judgment in this matter; but, after further and careful study of the records on file and the evidence submitted at the hearing I agree that in the interests of the public the abandonment of this line should be postponed. I concur, therefore, in the conclusions reached by the Deputy Chief Commissioner that the application should be refused.

October 18, 1935.

Commissioner Norris concurred.

Requête de la compagnie des chemins de fer Nationaux du Canada, demandant qu'une ordonnance soit rendue l'autorisant à discontinuer l'exploitation de sa ligne sur sa subdivision de Frelighsburg, dans la province de Québec, entre Farnham, mille 18.4, et Frelighsburg, mille 0.0, soit un parcours total de 18.4 milles.

Dossier N° 39310.1

JUGEMENT

GARCEAU, F. N., Commissaire en chef suppléant:

Une requête fut soumise en vertu de l'article 165-A de la Loi des chemins de fer, et de l'article 2, paragraphe 3, de la Loi régissant les chemins de fer Canadien National et Pacifique Canadien, de 1933, ainsi qu'en vertu de toutes autres dispositions s'y rattachant, demandant qu'une ordonnance soit rendue autorisant ladite compagnie de chemin de fer à discontinuer l'exploitation de la partie de sa ligne entre Farnham, mille 18.4, et Frelighsburg, mille 0.0, soit un parcours total de 18.4 milles.

Le chemin de fer au cours des quatre dernières années n'a fourni qu'un convoi de fret qui a circulé de temps à autre pour rencontrer les besoins urgents du public. L'an dernier, en 1934, ce service a consisté en une cinquantaine de trajets aller retour. Les convois faisaient partie du service des trains entre Waterloo et Montréal. Waterloo est situé à l'est de Granby. Le train part de Waterloo, passe par Granby, vient à Farnham, circulant une fois la semaine, d'habitude le samedi, se rend jusqu'à Frelighsburg, revient à Farnham le même jour, et puis termine sa course à Montréal. Il n'y a aucun convoi pour les personnes.

La compagnie du chemin de fer a démontré que le revenu total provenant de ce réseau a été de $33,656 du 1er mai 1930 au 30 avril 1931. Les dépenses se sont chiffrées à $36,670, soit une perte nette au cours de cette année-là d'environ $3,000.

Un bref historique de cette ligne qu'on veut abandonner se lit comme suit:

> "Mise en exploitation en 1882 (abandonnée en 1883 et exploitée de nouveau en 1901).
>
> "Construite en vertu de la Loi statutaire: Statuts de Québec, 35 Vic. chap. 29, et 37 Vic., chap. 24. Statuts du Canada, 36 Vic. chap. 70, et 59 Vic., chap. 26.
>
> "La compagnie Missisquoi Junction Railway, incorporée en 1869—Statut de Québec, 35 Vic. chap. 59—et la compagnie Montreal Chambly and Sorel Railway, incorporée en vertu du Statut de Québec, 35 Vic. chap 29, ont été fusionnées en 1874, Statut de Québec, 35 Vic. chap. 24. En vertu du Statut du Canada, 38 Vic. chap. 70, le nom fut changé en celui de Montreal Portland and Boston Railway Company. En 1896, la compagnie Montreal and Province Line Railway fut incorporée et devint la propriété du chemin de fer Montreal Portland and Boston. Le chemin de fer Montreal and Province Line est exploité en vertu d'un bail que détient la compagnie du C.N.R. et il a été ainsi exploité depuis le 1er novembre 1923."

La ligne que l'on veut supprimer dessert les localités de Farnham, Guérin, Durocher, Stone, Riceburg, Stanbridge Est, Hunter's Siding et Frelighsburg.

M. Rand, l'avocat de la compagnie du chemin de fer, a prétendu que la seule municipalité qui se trouverait vraiment affectée par la cessation de l'exploitation de cette ligne serait celle de Frelighsburg qui se trouve située à l'extrémité sud de la ligne. Frelighsburg est à dix milles de Bedford qui se trouve

être la station de chemin de fer la plus rapprochée. Il existe un bon chemin entre Frelighsburg et Bedford, mais ce chemin n'est pas entretenu et ouvert à la circulation des camions ou autobus durant l'hiver.

Les municipalités intéressées se sont opposées à cette requête et un grand nombre de témoins ont été entendus à l'appui de ces objections.

M. Shepherd, maire de Frelighsburg, a dit: "Le chemin de fer transporte aujourd'hui autant d'animaux et de produits destinés à cette région de l'est qu'il en transportait en 1915, et je crois que si la compagnie veut se reporter aux temps d'autrefois, elle constatera que ce transport est une chose payante. Nous devons ajouter à cela environ 3,000 cordes de bois. Il est vrai que maintenant ce bois est transporté par camion... En plus, il y a une industrie en perspective: la culture de la pomme. 35,000 arbres ont été plantés, et il nous faut nous procurer des engrais chimiques pour ces nouveaux vergers en croissance."

Le maire a déclaré qu'il n'ignorait pas qu'un service de trains quotidien était chose impossible, naturellement, mais que le chemin de fer était indispensable pour les expéditions lourdes. Il suggérait que des trains plus légers pourraient être mis en service. Il ajouta que les municipalités avaient payé des subsides au chemin de fer pour la construction, l'entretien et l'exploitation de cette ligne, pour un montant de $20,000.

Il s'est plaint aussi que l'industrie laitière, surtout le lait, souffrait du manque de service. En été, le transport du lait par camion à Montréal serait préjudiciable à ce produit. En hiver les gens sont obligés de faire dix milles pour le transporter à Bedford, et très souvent il gèle. Comme conséquence, l'industrie du lait a beaucoup souffert de cet état de choses.

Il y a aussi une certaine quantité de denrées venant de l'Ouest à Montréal mais à cause du mauvais service de trains, ces denrées sont transportées par camion.

Monsieur Murphy, maire de Stanbridge, a établi qu'il y avait un trafic assez volumineux mais comme le train ne circule qu'une fois par semaine, ce trafic était transporté la plupart du temps par camion et autobus.

M. Pickel, député, exprima l'opinion que les différents véhicules-moteurs, autobus et camions, devraient être contrôlées. Il y a un assez fort trafic dans cette région qui pourrait être donné au chemin de fer s'il n'était pas accaparé par les camions. Il prétendit que les camions ne faisaient pas d'argent et qu'ils exploitaient ce service à perte, mais que c'était une chose très populaire d'être à la roue et de conduire un char, une foule de personnes viennent à bout de se procurer un camion et de s'en servir pour un an ou deux jusqu'à ce que cette voiture soit hors de service. "Le transport par camions devrait être contrôlé" et ayant cette idée à l'esprit il demanda à ce que le jugement sur cette requête soit remis à plus tard. M. Pickel insista sur le fait que c'était le sentiment de tous les gens de cette région qu'il devrait y avoir un certain contrôle sur les camions, et ajouta qu'il fallait incontestablement que ce contrôle devienne un fait accompli.

A la question posée par M. Rand, à savoir: "Augmenteriez-vous les taux sur les expéditions par camions?"

"R. J'augmenterais les taux sur le transport par camions. J'établirais un tarif uniforme.

"Q. Plus élevé ou plus bas?

"R. Ah bien, je crois que les tarifs des camions devraient être plus élevés.

"Q. Croyez-vous que le public serait d'accord sur ce point-là?

"R. Je crois qu'il aurait à s'y conformer."

En réponse à une question posée par le commissaire Norris, M. Pickel a dit: "Bien, si le transport par camions n'est pas contrôlé, les perspectives pour le chemin de fer ne sauraient être brillantes."

Le témoignage rendu par M. Deslongchamps est important:—

"J'ai une terre à Frelighsburg et je suis l'Agronome de la compagnie des Vergers Modèles et responsable d'avoir commencé là une exploitation qui aura bientôt à peu près 50,000 arbres en production. Nous allons commencer cette année à avoir un peu de rapport, et sans le chemin de fer il sera à peu près impossible d'expédier une quantité d'environ 400 chars de pommes par année et de faire venir les engrais chimiques qu'il nous faut pour fertiliser ces arbres-là. Il nous faudra dix chars de ce produit.

"Les facilités de chemin de fer ont été un motif déterminant dans l'établissement des vergers modèles et dans le choix pour un grand nombre de nos amis de propriétés à Frelighsburg. Nous voulons étendre nos activités en aidant les cultivateurs de la région à se procurer de la moulée alimentaire, des engrais chimiques, en coopération avec notre Société. Tout dernièrement encore, depuis le printemps, nous avons dû expédier près de six wagons de moulée dont les cultivateurs avaient besoin quand les chemins étaient pratiquement impassables pour le camion. C'est notre intention de bâtir un entrepôt au village, d'avoir une usine centrale pour faire tout le triage et le classement des pommes, et nous comptions absolument sur les facilités du chemin de fer pour pouvoir expédier aux entrepôts frigorifiques à Montréal tous les fruits destinés aux grands marchés dont le transport par camion ne peut se faire sans un dommage considérable aux fruits.

"Je suis absolument certain que si la compagnie du chemin de fer—comme on fait dans tous les commerces bien organisés—prenait la peine de s'assurer la clientèle des cultivateurs, en demandant aux marchands, aux expéditeurs de bois ou cultivateurs de les encourager de préférence aux camions, on trouverait trois fois plus qu'il est nécessaire pour combler le déficit actuel de cette ligne de chemin de fer."

Il prétend que si l'exploitation de la ligne est discontinuée, le chemin de fer se privera lui-même d'un revenu considérable qui compenserait la perte qu'il subit actuellement.

Monsieur Methé, commerçant de bois, de Frelighsburg, s'exprime comme suit:—

"C'est mon opinion que si on nous enlève notre chemin de fer cela diminuera nos affaires de 50 à 70 pour cent, et peut-être 100 pour cent. Mon commerce a augmenté. J'ai expédié cette année 35 à 40 chars de bois."

Parfois il est obligé d'expédier par camion parce que des clients ne peuvent attendre le service hebdomadaire du chemin de fer mais toutes ses expéditions se font par chemin de fer si possible. Il a perdu la vente de 150,000 pieds de bois d'érable parce qu'il n'était pas certain de pouvoir en faire la livraison, craignant que le chemin de fer cesse ses opérations. Ce témoin déclare que ceux qui ont des camions font le commerce du transport à perte et que même les propriétaires de camions qui s'en servent pour leurs propres expéditions ne font que vingt-cinq cents par jour. Il prétend que même ces propriétaires ne peuvent gagner leur subsistance par ce mode de transport.

Le témoignage rendu par M. J.-F. Roy, du ministère de l'Agriculture, Frelighsburg, établit qu'il a une ferme à Frelighsburg sur laquelle il a planté des pommiers. L'industrie de la pomme dans un avenir rapproché va fournir un trafic important au chemin de fer et pour transporter ce fruit en bonne condition à Montréal, le chemin de fer est absolument nécessaire. Le transport par camion endommagerait ce fruit. M. Roy est d'avis que si la compagnie de chemin de fer cesse d'exploiter cette ligne, l'industrie de la pomme disparaîtra de

Frelighsburg et que, pour sa part, il vendrait sa ferme et son verger. M. Deslongchamps et M. Roy ont insisté sur le fait que si la compagnie cherchait à obtenir du trafic et donnait le service nécessaire à l'industrie, elle n'aurait pas de déficits. M. Roy prétend que les nouveaux tarifs des chemins de fer sont moins élevés que ceux des camions. Il prétend que beaucoup de camions ont discontinué l'exploitation de leur service depuis l'année dernière à cause des taux abaissés. Il y avait un camion qui venait à St-Guillaume quatre fois par semaine et il a été obligé de cesser ce service à cause des taux réduits.

> M. Roy: "Vous marchez d'après cette procédure et si vous aviez une autre méthode de fixer les tarifs, ce serait la mort de tous les camions. Votre procédure est mauvaise et je suggèrerais qu'on élimine le tarif des marchandises de classes. Et vous connaissez toutes les têtes dirigeantes de votre organisation à Montréal qui condamnent cette procédure tarifaire des classes. Ce sont des hommes très haut placés de votre organisation qui ont travaillé sur les classes (classifications des taux) et les condamnent. Avec ces tariffs, les camionneurs sont favorisés."

M. Darveau, pour la compagnie du chemin de fer, a prétendu que la question des tarifs n'avait rien à faire avec la présente cause.

La preuve telle que présentée a établi hors de tout doute que si la compagnie du chemin de fer pouvait se procurer tout le trafic de cette région, elle ne subirait pas de déficits et je crois sincèrement que l'exploitation de cette ligne devrait être continuée.

Comme je l'ai dit plus haut, la question tarifaire a été discutée par plusieurs témoins. L'avocat de la compagnie s'y est objecté alléguant qu'il ne s'agissait pas d'une question de taux ou tarifs. Je crois que cette objection doit être mise de côté. Lorsqu'une compagnie de chemin de fer demande de cesser l'exploitation de sa ligne ou d'une partie de sa ligne, elle doit établir non seulement qu'elle subit des déficits mais aussi que, quels que fussent les moyens de transport et les taux offerts au public, elle subirait encore des déficits et que l'intérêt public serait mieux servi par l'abandon de la ligne.

Il ne faut pas oublier que les chemins de fer sont une utilité publique, qu'ils ont été construits ou subventionnés par l'argent du peuple; qu'ils sont implicitement ou formellement obligés de servir le public, même à perte. Ces subsides ont été payés non seulement pour permettre aux actionnaires de retirer des dividendes mais aussi pour subir le risque de pertes.

La Commission des chemins de fer est l'autorité que le Parlement a constituée pour voir à ce que les chemins de fer remplissent leurs obligations vis-à-vis le public, à ce qu'ils donnent un service convenable, et il est incontestablement du devoir de la Commission de se renseigner sur tout motif pour lequel la requête d'abandon de cette ligne ne devrait pas être accordée.

Si cette proposition n'était pas vraie, les compagnies de chemins de fer auraient la discrétion de cesser l'exploitation d'une ligne en créant des conditions qui amèneraient des déficits.

Ce n'est pas que je veuille suggérer que les chemins de fer créeraient intentionnellement de telles conditions; mais seulement que la Commission, ayant le contrôle sur les opérations de chemins de fer et la responsabilité de protéger le public, dans certaines circonstances peut mieux comprendre ce qui est dans l'intérêt du public et du chemin de fer.

La Commission en prenant une décision a aussi le droit de tenir compte non seulement de ce qu'ont révélé les pièces au dossier et la preuve entendue à l'audition mais aussi de tous autres renseignements ou connaissances qu'elle a pu acquérir.

Il se fait beaucoup de transport dans le territoire desservi par la ligne de chemin de fer dont on veut discontinuer l'exploitation, et les vergers qui commencent à produire des fruits augmenteront le transport par chemin de fer. On compte que dans un avenir prochain environ 400 chars seront requis annuellement pour les expéditions des pommes et des engrais chimiques.

Il a été prouvé également qu'une grande partie du transport des fruits, lait et autres denrées, ne peut être fait par camion d'une manière avantageuse.

Cette région est industrieuse et prospère, disposée à favoriser le chemin de fer mais qui fut forcée de trouver d'autres moyens de transport à cause de l'absence d'un service convenable; mais le mode de transport qui a été substitué au chemin de fer n'a pas donné satisfaction généralement.

La compagnie du chemin de fer n'a pas prouvé que, même dans les conditions actuelles, avec la concurrence injuste des camions, elle ne pourrait augmenter ses revenus. Elle a simplement laissé le champ libre aux camions, malgré qu'elle ait reçu des subsides du gouvernement fédéral et des municipalités pour un service de trains déterminé.

Cette partie du pays a une population industrieuse laquelle, depuis la dépression, s'est efforcée sérieusement de ramener la prospérité en augmentant sa production, en développant l'industrie des vergers et en ouvrant un marché pour l'écoulement des produits bruts, etc.

Le moyen possible pour le chemin de fer de tirer profit de l'exploitation de cette ligne est démontré par les résultats obtenus en 1931-32, la dernière année pendant laquelle la compagnie a fourni au public un service régulier. Même durant ce temps de forte crise, les revenus du chemin de fer ont été de $33,657 et les dépenses imputables à cette ligne se sont chiffrées à $36,370, soit une perte nette de $2,714 seulement. Si nous examinons le dossier nous constatons que depuis cette époque la production dans cette partie de la région a augmenté et on s'attend à ce qu'elle continue d'augmenter à l'avenir.

Lorsque la compagnie a commencé à ne donner qu'un service de trains de fret hebdomadaire, la population s'est vue forcée de recourir à d'autres moyens de transport. Chacun des témoins entendus en cette cause a déclaré que le transport par véhicules-moteurs n'était pas satisfaisant pour la majeure partie des denrées, et qu'il était absolument d'aucune utilité pour quelques-unes. 'De plus, certains propriétaires de camions abandonnaient l'exploitation de leur service' (témoignage de M. Roy); 'la plupart des camionneurs ne faisaient pas d'argent et les camions seraient éliminés si la compagnie de chemin de fer donnait un service convenable et réduisait ses taux.'

Actuellement, la compagnie fait circuler un seul train de fret par semaine, de Waterloo à Granby et de là à Farnham; de Farnham il se rend à Frelighsburg, revient à Farnham et de là il va vers Montréal.

Les revenus pour l'annee 1933 ont été en-dessous de $5,000 et les dépenses ont été de $17,059, soit une perte nette de $12,376. Ceci prouve que la compagnie du chemin de fer n'a pas amélioré sa situation en réduisant son service au minimum, ce qui laisse croire qu'un service de train régulier et commode serait le seul moyen de remédier à cet état de choses; parce que si, en 1931, avec un service régulier, il n'est résulté pour la compagnie qu'une perte de $2,714 lorsque le trafic était moins volumineux qu'il ne l'est aujourd'hui, il est logique de conclure que ce déficit de 1931 aurait signifié un surplus en 1934 et 1935. En plus, les cultivateurs de Frelighsburg et des autres municipalités de même que le commerce de la région en général auraient pu profiter de ce service.

Je renverrais la requête.

Le 12 septembre 1935.

(*Traduction*)

Requête de la compagnie des chemins de fer Nationaux du Canada, demandant qu'une ordonnance soit rendue l'autorisant à discontinuer l'exploitation de sa ligne sur sa subdivision de Frelighsburg, dans la province de Québec, entre Farnham, mille 18.4, et Frelighsburg, mille 0.0, soit un parcours total de 18.4 milles.

Dossier N° 39310.1

Le Commissaire Stone:

Je ne suis pas d'accord avec certaines remarques contenues dans le jugement du Commissaire en chef suppléant en cette affaire; mais après avoir examiné de nouveau et soigneusement les pièces versées au dossier, ainsi que la preuve présentée à l'audition, je suis d'avis avec lui que dans l'intérêt du public la discontinuation de l'exploitation de cette ligne devrait être remise à plus tard. Je me rallie donc aux conclusions auxquelles en est arrivé le Commissaire en chef suppléant, à savoir—que la requête devrait être refusée.

Le 18 octobre 1933.

Le Commissaire Norris s'est rallié au jugement ci-dessus.

ORDER No. 52425

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 165A of the Railway Act, for approval of the abandonment of operation of that portion of their Frelighsburg Subdivision, in the Province of Quebec, between Farnham, mileage 18·4, and Frelighsburg, mileage 0·0, a total distance of 18·4 miles.

File No. 39310.1

Monday, the 4th day of November, A.D. 1935.

Hon. Hugh Guthrie, K.C., *Chief Commissioner.*
F. N. Garceau, K.C., *Deputy Chief Commissioner.*
Hon. T. C. Norris, *Commissioner.*
G. A. Stone, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Farnham, Quebec, May 14, 1935, in the presence of counsel for and representatives of the applicants, the town of Frelighsburg, the parish of St. Ignace de Stanbridge, and other municipalities interested, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

Application of the Canadian National Railways for an Order granting leave to abandon the operation of its St. Martins Subdivision in the Province of New Brunswick, between Hampton (M. 0·0) and St. Martins (M. 28·75), a distance of 28·75 miles.

File 39310.4

JUDGMENT

STONE, COMMISSIONER:

The Canadian National Railways applied to the Board under section 165A of the Railway Act, section 2, subsection 3, of the Canadian National-Canadian Pacific Act, 1933, and all other appropriate statutory provisions, for an order granting it leave to abandon the operation of the St. Martins Subdivision line of railways between Hampton (M. 0·0) and St. Martins (M. 28·75), a distance of 28·75 miles in the province of New Brunswick.

In support of this application, statements were submitted setting forth a general description of the line, its special industrial relationships, its revenue and expenses for the year October, 1930, to September, 1931, and for the calendar year 1933, an analysis of its freight traffic for the same years, and a map of the territory through which it runs. At the request of the Board, further financial statement was submitted for the years 1932, 1934, and for the first six months of 1935.

This line was incorporated by Provincial Act (Acts of Assembly, 1871, c. 49) and was opened for traffic between St. Martins (Quaco) and Upham in 1877, and from Upham to Hampton in 1880.

By Order in Council of the Government of the Dominion of Canada passed on the 22nd day of May, 1918, authority was given the Minister of Railways and Canals to purchase *inter alia* the said branch line and an agreement was executed between the Minister of Railways and Canals and the St. Martins Railway Company whereunder the railway and property of that company were sold to the Crown in right of the Dominion to be operated in connection with the Canadian Government Railways. In 1923 the branch became a part of the Canadian National Railways System.

The line passes through sparsely settled territory. Small lumbering operations with portable saw-mills and excavation of gravel for road-making purposes form the principal industries. There is some mixed farming.

On receipt of this application, the municipalities and other interests concerned were requested to file their submissions, and the application was then referred to the Board's Engineering and Operating Departments for inspection and report.

The case was heard at Saint John, N.B., on Tuesday, the 30th day of April, 1935, when additional presentation was made by counsel for the applicant, counsel for the province of New Brunswick, supplemented by representatives of the Maritime Board of Trade, city and county of Saint John, lumbering, farming, dairying, industrial and other interests affected.

Statements filed with the Board in regard to recent expenditures and operation losses of this system are summarized below, together with the number of cars handled and the actual maintenance charges from 1928 to 1933.

	Branch Line	Balance of System	Total
Total revenues accruing to—			
Oct. 1, 1930, to Sept. 30, 1931	$10,052	$21,016	$31,068
Year 1932			18,698
Year 1933	4,850	7,609	12,459
Year 1934			17,890
Jan. 1, 1935, to June 30, 1935			13,515
Total expenditures incurred to—			
Oct. 1, 1930, to Sept. 30, 1931	$37,257	$10,282	$47,539
Year 1932			32,684
Year 1933	36,383	3,660	40,043
Year 1934			33,516
Jan. 1, 1935, to June 30, 1935			20,523
System loss from operation—			
Oct. 1, 1930, to Sept. 30, 1931			$16,471
Year 1932			13,986
Year 1933			27,585
Year 1934			15,626
Jan. 1, 1935, to June 30, 1935			7,008

Statement of car movements on branch line—

	In	Out	Total
Oct. 1, 1930, to Sept. 30, 1931	74	428	502
Year 1932	33	229	262
Year 1933	32	205	237
Year 1934	39	336	375
Jan. 1, 1935, to June 30, 1935	24	288	312

Actual maintenance cost on branch line.

1928	$ 32,282
1929	24,694
1930	24,511
1931	22,594
1932	14,080
1933	15,449
	$133,610

Yearly average, $22,268.

It was contended by the counsel for the applicant at the hearing that the figures shown for the test period of October 1, 1930, until September 30, 1931, also for the year 1933, were actual out-of-pocket maintenance expenditures for those years and did not include supervision or general overhead expenses. This statement was later corrected by letter to show that in each of the statements furnished the Board for those two years, there was included the sum of $2,500 representing divisional supervision.

Explanation was made in regard to the allocating of the earnings and expenses between the branch line and the balance of the system over which freight or passengers were hauled and it was stated that on the Hampton and St. Martins Branch there was a controlling grade of something over 4 per cent. This is not a very long grade, but it and other conditions limit the hauling capacity to four or at the outside five loaded cars, and on these grades it is necessary to double the movements, making operation very expensive. This applies to both lumber and gravel.

It was further contended that operating losses were substantial and that passenger traffic was practically nil and the counsel for the applicant when examining Mr. Cochrane cited the following as an example:—

IN ONE YEAR (PRESUMABLY 1934)

June	5 passengers
July	0 passengers
August	12 passengers
September	7 passengers
October	8 passengers
November	16 passengers
and up to December 26th	12 passengers

It was further stated that considerable of the traffic now moves by automobile or truck. After all it is a question of weighing commercial and public inconvenience against the financial result of the operation and not looked upon

as a precedent by the Canadian National Railways against any public or against any interests. All that the administrators of the Canadian National Railways are doing is carrying out what they consider to be their duty in the present conditions and circumstances of railway activity in this country.

In connection with automobile or truck traffic, the railway contended that an excellent gravel surfaced road had been constructed between St. Martins and Saint John (30 miles) and during the open season bus and truck competition is experienced.

Counsel appeared for the provincial Government and examined various witnesses in opposition to this application. Exhibits were filed with the Board to show that the railway obtained a grant of $131,000 from the province of New Brunswick by way of subsidy and the greater part of its right of way gratis at the expense of the owners of the land through which the line passed, and this grant was intended to go into a railway that would continue operation. Damage to industries such as lumbering, farming, and the shipment of gravel should be seriously considered and, in addition, the position residents along this line would be placed in when cut off from hospital service on account of impassable highways for several months of the year. Between 2,000 and 2,500 men benefit in various degrees from the railway service and a community of approximately 3,500 people. (Page 482, Vol. 619-20.)

It was further contended that a 50 per cent ratio might be fair as a matter of accounting, but as main line trains pick up freight originating at the St. Martins Branch at Hampton, the ratio given, in the opinion of the counsel for the province is excessive.

The counsel for the province further pointed out that there is a fine class of gravel being obtained from St. Martins which seemingly cannot be obtained elsewhere in the lower part of the province. This gravel has to be brought out by rail.

Exhibit No. 2 filed by the applicant shows that the first two cars were shipped in 1927, none in 1928 and 1929, 62 cars in 1930, 182 cars in 1931, 104 cars in 1932. Another statement shows that there were also shipped 20 cars in 1933, 42 cars in 1934, and 23 cars for the first six months of 1935. In Exhibit No. 11 it is stated that some of this gravel was shipped to Prince Edward Island and points in New Brunswick. It was loaded by A. H. Moore at a price from $16 to $22 per car, while the freight haul charges gave the railroad from $30 to $80 per car. The counsel for the province of New Brunswick stated that "from the way the business has increased it would seem that the gravel business is an assured industry in St. Martins for some years to come." It is possible with the increase in hard surface road building in New Brunswick that this business will develop, but will be frustrated by the closing down of this line.

If the service were abandoned, the people would be handicapped in bringing in feed, fertilizers, seed and other necessities which are essential for the development of the territory now served.

Evidence of witnesses showed that the distance by highway from Upham to Saint John through Loch Lomond was 27 or 28 miles, and from St. Martins to Saint John approximately 30 miles; this latter road is exceptionally hilly and trucks could not operate over this road in winter on account of the accumulation of ice, and that for three or four weeks in the spring trucks could not get up Quinn's Hill between St. Martins and Saint John. No regular commercial bus line or truck service was operated out of St. Martins or any other station served by this line of railway; and there was no traffic by water between Saint John and St. Martins, but pulpwood was shipped from St. Martins by the Pajescot Paper Company going to the United States by their own barges; also that there were ten miles of settlement east of St. Martins which were also served by this railway.

The representative of the lumber interests contended that the rail export rate from Hanford Brook to Saint John was $1.30 per M, while shipping the same quantity by motor truck from Hanford Brook would cost $3, and if teams were used it would take a day and a half to haul one load of 1,500 feet a distance of 30 miles—"If you figure the team and help for unloading it is $6, and you haul say 1,500 feet. In other words your lumber would cost you $6 a thousand the first fifteen miles—that would be $9 to haul 1,500 feet or $6 a thousand." (Page 451, Vol. 619-20.)

The substantial increase in costs for hauling lumber by teams, or motor trucks, over rail charges appears to be the deciding factor for continuance of operation or failure of this business. It was stated motor truck haul from St. Martins to Saint John is not practicable, and that the highway between the above places could not be used the greater part of the year, also that the lumber business employed five hundred or more men in winter, beside the hauling by rail of necessary supplies to the different contractors engaged in the lumber business.

Report of the Board's officers shows that lumber ready for rail shipments was piled near the railroad track at Barnesville, Titus Mills, Upham, Hanford Brook, Porter Road, Lake Henry, and Shanklin, intermediate stations between Hampton and St. Martins, and when the inspection was made that the Canadian National District Freight Agent agreed with Mr. McLeod that the territory served will produce this year approximately six million feet of lumber.

In the judgment rendered in the Elgin and Havelock Subdivision Case, which issued on August 30, 1935, reference was made to motor truck operation, and requirements of the Motor Carrier Act, also to the announced policy of the Motor Carrier Board of New Brunswick, and what is contained therein applies with equal force in this case.

By Order in Council P.C. 1260 of the 22nd May, 1918, authority was given for the purchase of certain branch lines in the Maritime Provinces (which included the Hampton and St. Martin's line), wherein it is stated by the then Minister of Railways and Canals:—

> "If the people along the line are to continue to have the benefit derived through the operation of the railways, it will be necessary for the Government to take over and operate the branch railways, in conjunction with the Government Railway System, as the present owners are unable to continue financing same. The minister observes that the said branch lines have in the past and will in the future serve as feeders of considerable value to the Canadian Government Railway."

The foregoing illustrates the financial difficulties experienced under private ownership, which was well known at the time these lines were absorbed, but it was considered these branch lines would be an asset to main line business as feeders of considerable value.

There is a substantial car movement over this line to Hampton and it appears much of this traffic can be handled by trains assigned to take care of through main line traffic. More loaded cars were moved in the first six months of 1935 than in either of the years 1932 and 1933, and nearly as many as in the entire year of 1934.

Between October 1, 1930, and April 25, 1931, mixed train service was operated daily except on Sundays and Wednesdays, and from April 26, 1931, to September 30, 1931, on Tuesdays, Thursdays, and Saturdays. This service was further reduced on June 24, 1934, to Wednesday only. On February 5, 1935, tri-weekly mixed train service was again made effective and the railway notified the Board, by telegram, this was "on account of heavy movement lumber, short sidings, and weather conditions."

POPULATION AS REPORTED BY THE DOMINION BUREAU OF STATISTICS—CANADA RECORD

	1871	1881	1891	1901	1911	1921	1931
St. Martins (St. John's County)	2,410	2,558	2,335	1,957	1,637	1,422	1,195
Upham (King's County)	1,413	1,421	1,145	981	845	820	739

Counsel for the provincial Government stated:—

> "If you take the three parishes surrounding the railway as a fair estimate of the people served, in this particular district, it would run to something like 3,500 people. Certainly 2,000 to 2,500 men benefit in varying degrees from this railway." (Page 482, Vol. 619-620.)

The population along the line, including St. Martins, has decreased, and the settlements served do not produce sufficient passenger traffic for that to be considered serious enough for continuing operation. However, without this branch line the people of St. Martins would be isolated some thirty miles from the nearest railroad station or hospital by the highways. More personal accidents occur in lumber operations than in the majority of other industries, as the records of the New Brunswick Workmen's Compensation Board show, and many such cases need urgent hospital treatment.

The lumber and gravel business need the railroad to continue functioning, which business while available is of considerable benefit to the public concerned. Therefore, I do not consider this an opportune time in the public interest to discontinue the service, and, in my opinion, the application should be refused.

October 28, 1935.

The Assistant Chief Commissioner and Commissioner Norris concurred.

ORDER No. 52408

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 165A of the Railway Act, for approval of the abandonment of operation of that portion of their St. Martins Subdivision, in the Province of New Brunswick, between Hampton (Mile 0·0) and St. Martins (Mile 28·75), a distance of 28·75 miles.

File No. 39310.4

Friday, the 1st day of November, A.D. 1935.

Hon. Hugh Guthrie. K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*
Hon. T. C. Norris, *Commissioner.*
G. A. Stone, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Saint John, New Brunswick, April 30, 1935, in the presence of counsel for and representatives of the applicants, the province of New Brunswick, and the Maritime Board of Trade, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

In the matter of Ramsay Street Crossing, Quebec. Que., Canadian National Railways; and consideration of the status of the crossing and protection thereat.

(File No. 37134)

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER:

This is an inquiry at the instance of the Quebec Harbour Commissioners for the opinion of the Board as to whether the Canadian National Railways and the Quebec Railway, Light and Power Company should not be made responsible for the maintenance and operation of the gate at the north end of Ramsay street, in the city of Quebec.

Since the autumn of the year 1920 a gate has been maintained at this crossing by the Quebec Harbour Commissioners at an annual cost running from $2,190 to $3,285 between the years 1920 and 1934, according to a statement submitted by the Quebec Harbour Commissioners.

Ramsay street is a public highway in the city of Quebec, extending in a northerly and southerly direction through that portion of the city where the railway crossing in question in this inquiry is situated. Ramsay street is bounded on the easterly side by the lands of the Quebec Harbour Commissioners, which lands are vested in the Crown in the right of the Dominion of Canada. The Canadian National Railways and the Quebec Railway, Light and Power Company both operate their trains over a joint single track upon Ramsay street.

On May 15, 1888, the Quebec Harbour Commissioners executed a grant by way of lease to the Quebec and Lake St. John Railway Company and the Quebec, Montmorency and Charlevoix Railway Company of certain portions of the property of the Harbour Commissioners as particularly described in the said lease, and it was provided in the said lease that both of the above-named railway companies should "when their lines of rails crossed the present planked roadway laid from Ramsay street to the macadamized road on the embankment maintain and keep in order such crossing."

On September 23, 1898, by a further deed of grant by way of lease the Quebec Harbour Commissioners granted to the Quebec and Lake St. John Railway Company and the Quebec, Montmorency and Charlevoix Railway Company further parcels of land as particularly set out in said last-mentioned grant. This second grant by way of lease provided additional trackage facilities to the two railway companies, and also contained a provision that all conditions contained in the original deed, or lease, should remain unaltered. By the last-mentioned lease certain provisions are made in regard to a crossing on Ramsay street in the following terms:—

> "That the railway companies parties to the present deed undertake to protect the said Quebec Harbour Commissioners' road-crossing or communication between the Embankment and Ramsay street, by gates or other approved methods so as not to cause severance to the Quebec Harbour Commissioners; the Railway Committee of the Privy Council to be the judges of the necessity of the placing of the said gates or other approved methods; but in case of an application from the Quebec Harbour Commissioners to the said Railway Committee of the Privy Council for the placing of such gates or safeguards (due notice of which shall have previously been served in writing upon the interested railway companies) and the Railway Committee of the Privy Council fail to take action or to render their decision within two months, then the Quebec Harbour Commissioners can insist upon, and the railway companies interested must and by these presents do bind and oblige themselves jointly and severally to place the gates and other approved safeguards without any further delay";

At the time of the execution of the above-mentioned leases the only roadway which existed from the Harbour Commissioners' property to Ramsay street was a planked road running in a southeasterly direction to Ramsay street, between the points marked "A" and "B" upon the plan filed by the Harbour Commissioners as Exhibit No. 3. No application was ever made by the Quebec Harbour Commissioners to the Railway Committee of the Privy Council for the placing of gates or other safeguards at the intersection of the planked road and Ramsay street as provided in the above-mentioned lease.

The parcels of land demised to the railway companies under these leases lie to the east of Ramsay street and were, no doubt, acquired by the railways for switching and shunting purposes.

Prior to the year 1920 the Harbour Commissioners had maintained the planked roadway shown upon Exhibit No. 3 to provide access from Ramsay street to their property, and this planked roadway intersected Ramsay street at a point about 300 to 350 feet south of the present road where a gate is now maintained by the Harbour Commissioners. This planked roadway was maintained until 1920, when it seems to have been abandoned and a new roadway was thereafter constructed by the Harbour Commissioners running in a straight line to Ramsay street, where the gate in question was installed. The traffic to and from the Harbour Commissioners' property has been carried over the new roadway since 1920. This roadway, which apparently has no distinctive name, is in use not only by persons having business upon the Harbour Commissioners' property, but is also in use by the public in general. It was constructed and paid for by the Harbour Commissioners upon Crown property, and the Municipal Corporation of the City of Quebec has no jurisdiction over it. Counsel for the city of Quebec expressly stated that the municipality exercised no jurisdiction or control over this road and did not assume any obligation in regard to it.

At the point of intersection of the old planked road and Ramsay street, which is about 300 to 350 feet south of the present roadway, there is an uninterrupted view of the railway track both north and south, and while there are approximately 150 train movements passing this point of intersection daily, the speed of outgoing and incoming trains is necessarily at a very low rate as the station, or terminal point, is only a block or two away. It was stated that the speed of trains at the point of intersection of the old planked road would not be more than three or four miles an hour. At the point of intersection of the new roadway with Ramsay street the view to the north is completely obstructed by a building known as Morton's Shop, which is shown upon the plan submitted. This is a substantial building some 30 feet in height erected on the corner of the new roadway and Ramsay street upon the property of the Harbour Commissioners, and it completely obscures any view of the railway to the north by persons approaching Ramsay street from the Harbour Commissioners' property. The view at this point in a southerly direction is unobstructed.

The Canadian National Railways now own and operate the Quebec and Lake St. John Railway and the Quebec, Montmorency and Charlevoix Railway, and use the track running upon Ramsay street from the Union Station in a northerly direction.

There can be no doubt that under the provisions of the above deeds, or leases, the Canadian National Railways would be bound to maintain proper crossing protection at the point of intersection of the old planked road and Ramsay street under the provisions of the above leases, if it were deemed proper by the Board to order protection at this point. But in regard to the intersection of the new roadway and Ramsay street different considerations arise. In the first place, the new roadway was constructed subsequent to the railway tracks upon Ramsay street. It was constructed by the Harbour Commissioners on their own property, at their own expense, and without any preliminary arrangement or agreement

with the railway companies for protection by gates or otherwise. It is also to be noted that Morton's Shop, which completely excludes any view to the north, was erected subsequent to the construction of the railway upon the property of the Harbour Commissioners with the concurrence of the Harbour Commissioners. While it is true that a great deal of general traffic unconnected with the harbour passes over the new roadway, nevertheless the roadway was constructed by the Harbour Commissioners mainly for the purpose of securing better facilities for ingress and egress to their own property. The new roadway has never been dedicated by the Quebec Harbour Commissioners as a public highway, nor has it been accepted by the city of Quebec as a public highway.

I do not think it is open to the Harbour Commissioners to insist that the new roadway merely takes the place of the old planked road and that, therefore, the railway company should be charged with the maintenance of crossing protection on the new roadway. It is quite possible that no special protection might ever have been required at the intersection of the planked road and Ramsay street, because at that point the view both north and south is practically unobstructed, whereas at the intersection of the new roadway the view to the north is absolutely obstructed by Morton's Shop.

Under all the circumstances I consider that the railway company occupies a position of seniority in regard to the crossing at this point, and that the cost of construction and maintenance of crossing protection should be borne by the Quebec Harbour Commissioners as heretofore.

The Quebec Railway, Light and Power Company were represented by counsel at the hearing, but joined in the submission of the Canadian National Railways and contended that they were in no way responsible for the maintenance or operation of the above crossing protection.

October 31, 1935.

The Assistant Chief Commissioner and the Deputy Chief Commissioner concurred.

ORDER No. 52421

In the matter of the reference by the Quebec Harbour Commissioners for the opinion of the Board as to whether the Canadian National Railways and the Quebec Railway, Light and Power Company should not be made responsible for the maintenance and operation of the gate at the north end of Ramsay street, in the city of Quebec.

File No. 37134

TUESDAY, the 5th day of November, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*

The matter was heard at the sittings of the Board held in Quebec, October 28, 1935, in the presence of counsel for and representatives of the Canadian National Railways, the Quebec Harbour Commissioners, the Quebec Railway, Light and Power Company, and the city of Quebec. It was established that the roadway which crosses the Canadian National Railways where the gate in question was installed was constructed by and at the expense of the Quebec Harbour Commissioners, on their own property, after the laying of the tracks on Ramsay street. The cost of installing and maintaining the gate was also

borne and paid by the Harbour Commissioners. Under all the circumstances of the case, the railway company, in the opinion of the Board, is senior at the point of crossing.

The Board therefore declares that the cost of constructing and maintaining the said gate should be borne and paid by the Quebec Harbour Commissioners.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52372

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

TUESDAY, the 22nd day of October, A.D. 1935.

Hon. HUGH GUTHRIE. K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders: That the following tariffs, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement 51 to Tariff C.R.C. No. E-1234.
Supplement 104 to Tariff C.R.C. No. E-1235.
Supplement 105 to Tariff C.R.C. No. E-1235.
Supplement 106 to Tariff C.R.C. No. E-1235.
Supplement 107 to Tariff C.R.C. No. E-1235.
Supplement 34 to Tariff C.R.C. No. E-1238.
Supplement 57 to Tariff C.R.C. No. E-1244.
Supplement 36 to Tariff C.R.C. No. E-1247.
Supplement 11 to Tariff C.R.C. No. E-1671.
Supplement 25 to Tariff C.R.C. No. E-1689.
Supplement 21 to Tariff C.R.C. No. E-1737.
Supplement 47 to Tariff C.R.C. No. E-1804.
Supplement 48 to Tariff C.R.C. No. E-1804.
Supplement 49 to Tariff C.R.C. No. E-1804.
Supplement 29 to Tariff C.R.C. No. E-1829.
Supplement 16 to Tariff C.R.C. No. E-1906.
Supplement 17 to Tariff C.R.C. No. E-1906.
Supplement 19 to Tariff C.R.C. No. E-1911.
Supplement 19 to Tariff C.R.C. No. E-1974.
Supplement 6 to Tariff C.R.C. No. E-1976.
Supplement 14 to Tariff C.R.C. No. E-2047.
Supplement 9 to Tariff C.R.C. No. E-2248.
Supplement 10 to Tariff C.R.C. No. E-2248.
Supplement 1 to Tariff C.R.C. No. E-2311.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52393

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 26th day of October, A.D. 1935.

Hon. HUGH GUTHRIE. K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 48 of Supplement No. 48 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 48 to Tariff C.R.C. No. 812, approved herein, is 17·75 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52395

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 26th day of October, A.D. 1935.

Hon. HUGH GUTHRIE. K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published to Yarmouth, Nova Scotia, in item 170B of Supplement No. 9 to Tariff C.R.C. No. 866, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 9 to Tariff C.R.C. No. 866, approved herein, is 15 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52396

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 26th day of October, A.D. 1935.

Hon. HUGH GUTHRIE. K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published to Bridgetown, Nova Scotia, in item 96 of Supplement No. 7 to Tariff C.R.C. No. 907, filed by the Dominion Atlantic Railway

Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 7 to Tariff C.R.C. No. 907, approved herein, is 6 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52387

In the matter of the application of G. C. Ransom, Agent, for permission to withdraw, on less than statutory notice, the rate of $1.12 per 100 pounds on dates or figs, carloads, published in item 628 of Supplement No. 36 to Tariff C.R.C. No. 569.

File No. 27612.125

MONDAY, the 28th day of October, A.D. 1935.

Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered that G. C. Ransom, Agent, be. and he is hereby, permitted to cancel, on one day's notice, the rate of $1.12 on dates and figs, carloads, via all-rail route from Montreal Wharf to Winnipeg, published in Supplement No. 36 to Tariff C.R.C. No. 569, Item 628.

T. C. NORRIS,
Commissioner.

ORDER No. 52397

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 28th day of October, A.D. 1935.

Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published from Lakeville, Nova Scotia, in item 5C of Supplement No. 39 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 39 to Tariff C.R.C. No. 851, approved herein, is 24 cents per 100 pounds.

T. C. NORRIS,
Commissioner.

ORDER No. 52398

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 28th day of October, A.D. 1935.

Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published from Lakeville, Nova Scotia, in item 76D of Supplement No. 92 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 92 to Tariff C.R.C. No. 856, approved herein, are as follows:—

	Cents per one hundred pounds
Less than carloads	36
Carloads	24

T. C. NORRIS,
Commissioner.

ORDER No. 52399

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Martime Freight Rates Act; and Order No. 52141, dated August 7, 1935.

File No. 34822.13

MONDAY, the 28th day of October, A.D. 1935.

Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon its appearing that the through tolls published in Tariff C.R.C. No. 974, filed by the Dominion Atlantic Railway Company are, per barrel, the said company's proportion should be on the same basis,—

The Board therefore orders: That the words "cents per 100 pounds," wherever they appear in the said Order No. 52141, dated August 7, 1935, be struck out and the words "per barrel" substituted therefor.

T. C. NORRIS,
Commissioner.

ORDER No. 52400

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 28th day of October, A.D. 1935.

Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 979, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 979, approved herein, are as follows:—

Via Digby Origin Group		Destination Group	
1	Windsor-Falmouth, N.S.	A	Brockville, Cornwall, Ottawa, Ont.
2	Hantsport, N.S.		
3	Avonport-Wolfville, N.S.	B	Kingston-Trenton, Ont.
4	Port Williams-Kentville, N.S.	C	Pembroke, Perth, Ont.
5	Mill Village-Kingsport, N.S.	D	Peterboro, Ont.
	Colbrook-Berwick, N.S.	E	Lindsay, Oshawa, Toronto, Ont.
	Billtown-Grafton, N.S.	F	Hamilton, Orillia, Ont.
6	Aylsford-Kingston, N.S.		
	Somerset-Weston, N.S.	G	Guelph, Stratford, Collingwood, North Bay, Ont.
7	Wilmot, N.S.	H	Brantford, Kitchener, Ont.
8	Middleton, N.S.	I	London, Ont.
	Bridgetown, N.S.	J	Sudbury, Ont.
9	Brickton-Paradise, N.S.		
	Tupperville-Annapolis, N.S.	K	Sault Ste. Marie, Ont.
	Royal, N.S.	L	Cobalt, Ont.
10	Upper Clements-Digby, N.S.	M	Kirkland Lake, Ont.
11	North Range-Ohio, N.S.	N	Noranda, Que.
12	Yarmouth, N.S.	O	Cochrane, Timmins, Ont.

Normal tolls are those prescribed in Order No. 51492, dated November 3, 1934, and Order No. 51540, Dated November 27, 1934.

VIA TRURO

The normal tolls are those certified via Digby, N.S., without deduction of $1\frac{1}{2}$ cents per 100 pounds.

The Dominion Atlantic Railway Company's proportion of billed and normal tolls is that prescribed in Order No. 51540, dated November 27, 1934.

T. C. NORRIS,
Commissioner.

ORDER No. 52394

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 31st day of October, A.D. 1935.

Hon. HUGH GUTHRIE. K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item 6 of Supplement No. 38 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 38 to Tariff C.R.C. No. 851, approved herein, is 37½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52402

In the matter of the application of Frank Van Ummersen, Agent, New England Freight Association, for permission to amend Tariff C.R.C. No. 208 and Tariff C.R.C. No. 233, upon one day's notice, to correct an error.

File No. 27612.126

FRIDAY, the 1st day of November, A.D. 1935.

Hon. HUGH GUTHRIE. K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that an error has been made in making applicable to points in Canada certain exceptions to the official classification published in the said tariffs,—

It is ordered: That the applicant be, and he is hereby, permitted to file, upon one day's notice, an amendment to Tariffs C.R.C. No. 208 and C.R.C. No. 233, to correct the said error.

H. GUTHRIE,
Chief Commissioner.

SUMMARIES OF ORDERS ISSUED BY THE BOARD OF RAILWAY COMMISSIONERS

52327. Oct. 7—Authorizing Montreal & Southern Counties Ry. to open for traffic diverted line in the Parish of St. Paul d'Abbotsford, Que.

52328. Oct. 7—Approving and authorizing clearances at proposed building on C.P.R. spur serving Pulverized Products, Ltd., just north of Angus Shops, Montreal, Que.

52329. Oct. 8—Approving Supp. 1 C.N. Rys. Standard Freight Mileage Tariff C.R.C. No. E-1210.

52330. Oct. 8—Directing that 40 per cent of cost of constructing diversion of highway in SW ¼ Sec. 15-41-14 W4M, and in NW ¼ Sec. 10-41-14 W4M, Alta. by C.N. Rys. be paid out of Railway Grade Crossing Fund.

52331. Oct. 9—Directing C.P.R. to install double bells and wigwags at crossing just west of Agincourt, Ont.

52332. Oct. 8—Authorizing C.P.R. to construct spur to serve Canadian Sugar Factories, Ltd., at Picture Butte, Alta.

52333. Oct. 9—Directing C.P.R. to install automatic bell and wigwag at crossing of Highway No. 27, 1·3 miles north of Midhurst Station, Ont.

52334. Oct. 9—Directing C.P.R. to install bell and wigwag signal at crossing 1·9 miles south of Woodbridge Station, Ont.

52335. Oct. 8—Declaring C.P.R. crossing 1·28 miles west of Locust Hill Station, Ont., protected to Board's satisfaction.

52336. Oct. 8—Authorizing Alta Dep't Public Works to construct highway crossing over Northern Alberta Rys. at mileage 235·3, Secs. 22 & 27-74-17 W5M.

52337. Oct. 9—Directing C.P.R. to install double bells and wigwags at crossing of Kennedy Road, being third crossing west of Agincourt, Ont.

52338. Oct. 9—Directing C.P.R. to install double bells and wigwags at crossing of King's Highway No. 34, at Green Valley, Ont.

52339. Oct. 10—Authorizing B.C. Dep't of Public Works to construct diversion of Vernon-Armstrong Highway near Larkin, B.C., and closing crossing of C.P.R.

52340. Oct. 9—Directing C.N. Rys. to install automatic bell and wigwag signal at St. Eleanor's Crossing, west of Summerside, P.E.I.

52341. Oct. 9—Directing C.P.R. to install automatic bell and wigwag signal at crossing of King's Highway No. 26 just north of station at Midhurst, Ont.

52342. Oct. 9—Directing C.N. Rys. to install automatic bell and wigwag signal at crossing mileage 38·44 Kensington Subd'n, P.E.I.

52343. Oct. 9—Rescinding Order 52145, Aug. 9, 1935, requiring all switch movements between centre and north gates of C.N. Rys. crossing of DeCourcelles Street, Montreal, Que., to be flagged.

52344. Oct. 9—Authorizing B.C. Dep't Public Works to construct overhead crossing of C.N. Rys. at a point nine miles north of Kelowna, B.C.

52345. Oct. 11—Declaring C.P.R. crossing of Calgary Ave., Penticton, B.C., protected to Board's satisfaction.

52346. Oct. 11—Declaring C.P.R. crossing, first west of Tucker Siding, Man., protected to Board's satisfaction.

52347. Oct. 11—Declaring C.P.R. crossing one-half mile east of Uniondale Station, Ont., protected to Board's satisfaction.

52348. Oct. 11—Declaring B.C. Electric Ry. crossing of Boundary Road, Vancouver, B.C., protected to Board's satisfaction.

52349. Oct. 12—Amending Order 52225, Sept. 10, 1935, by adding clause approving and authorizing clearances at Locke Street Bridge, Hamilton, Ont., T.H. & B. Ry.

52350. Sept. 9—Approving abandonment of operation of C.N. Rys. Iberville Subd'n between Iberville and St. Hyacinthe, Que., 28·1 miles.

52351. Oct. 9—Authorizing C.N. Rys. to close and divert north and south road allowance between Secs. 9 and 8-24-27 W4M, at Norfolk, Alta.

52352. Oct. 12—Approving proposed layout and location of C.N. Rys. station building at Beachburg, Ont.

52353. Oct. 12—Authorizing C.N. Rys. to operate over crossing by C.P.R. at Fergus, Ont., without stopping.

52354. Oct. 11—Authorizing Alberta Dep't Public Works to construct highway crossing over C.P.R. in NW ¼ sec. 20-7-3 W5M, Alta.

52355. Oct 11—Authorizing C.N. Rys. to close and divert north and south road allowance between NE ¼ sec. 1-38-25 and NW ¼ sec. 6-38-24 W2M, Sask.

52356. Oct. 9—Authorizing Quebec Dep't Roads to construct subway under C.N. Rys. on Perron Boulevard, at Val Brillant, Que.

52357. Oct. 14—Declaring C.N. Rys. crossing west of Jones Siding, Ont., protected to Board's satisfaction.

52358. Oct. 14—Declaring C.N. Rys. crossing east of Courtland, Ont., protected to Board's satisfaction.

52359. Oct. 14—Refusing application Rural Mun. of Portage la Prairie, Man., requiring construction of subway under C.N. Rys. and C.P.R. on Provincial Highway No. 1.

52360. Oct. 14—Amending Order 49163, Oct. 26, 1932, by striking out words and figures "11.25 a.m. and 5.25 a.m., daily, and by a member of the yard switching crew between the hours of 5.25 a.m. and 11.25 a.m., daily" wherever they occur, and substituting therefore the figures and words "11.40 a.m. and 5.45 daily, and by a member of the yard-switching crew between the hours of 5.45 a.m. and 11.40 a.m. daily"—Quebec Street Crossing, C.P.R. at London, Ont.

52361. Oct. 15—Refusing application of Town of Bredenbury, Sask., requiring the construction of a subway under C.P.R. on main highway through said Town.

52362. Oct. 15—Extending until May 15, 1936, time within which C.P.R. may construct spur to serve Trump Oil Co., Ltd., at Trump, Man.

52363. Oct. 17—Permitting C.P.R. to publish and file an amendment to its tariff C.R.C. No. E-4746, eliminating Colborne, Ont., as a collection and delivery point.

52364. Oct. 16—Declaring C.P.R. crossing east of Belleville Station, Ont., protected to Board's satisfaction.

52365. Oct. 16—Amending Order 27768, Oct. 9, 1918, to provide that crossing of Josephine Street, Wingham, Ont., be protected by station staff between hours of 6 a.m. and 6 p.m. daily.—C.N. Rys.

52366. Oct. 15—Refusing application of C.P.R. for abandonment of operation of Kootenay & Arrowhead Ry. (Lardeau Subd'n) between Lardeau and Gerrard, a distance of 33·1 miles.

52367. Oct. 17—Authorizing B.C. Dep't Public Works to construct highway crossing over C.P.R. at mileage 0·2 Slocan Branch, B.C.

52368. Oct. 18—Relieving Lake Erie & Northern Ry. from maintaining cattle guards at crossing East River Road, south of Galt, Ont.

52369. Oct. 19—Declaring C.N. Rys. crossing, first south of Dequen Station, Que. (Lac Belley Crossing) protected to Board's satisfaction.

52370. Oct. 19—Declaring C.P.R. crossing first west of St. Cuthbert Station, Que., protected to Board's satisfaction.

52371. Oct. 19—Refusing application of C.N. Rys. for abandonment of operation of their Iberville Subd'n between St. Hyacinthe and Bellevue, Que., a distance of 31·3 miles.

52372. Oct. 22—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, certain supplements to tariffs filed by C.N. Rys. under sec. 3.

52373. Oct. 21—Declaring C.P.R. crossing near Pinkie, Sask., protected to Board's satisfaction.

52374. Oct. 21—Declaring C.P.R. crossing of Winnipeg Street, Regina, Sask., protected to Board's satisfaction.

52375. Oct. 19—Extending until June 1, 1936, time within which C.N. Rys. may install wigwag signals at crossing at Cook's Brook, N.B.

52376. Oct. 23—Authorizing Quebec Central Ry. to close station at Massawippi, Que., and remove caretaker maintained under Order 36438.

52377. Oct. 21—Rescinding Order 45071, July 18, 1930, and approving proposed new location of freight and passenger shelter to be erected by C.N. Rys. at Tarnopol, Sask.

52378. Oct. 22—Authorizing C.P.R. to construct spur to serve Nichols Chemical Co., Ltd., at Sulphide, Ont.

52379. Oct. 19—Authorizing B.C. Dep't Public Works to construct crossing over C.P.R., at Canal Flats, mileage 64·12 Lake Windermere Subd'n, crosisng at mileage 64·2 to be closed.

52380. Oct. 23—Declaring C.N. Rys. crossing west of Unionville, Ont., protected to Board's satisfaction.

52381. Oct. 23—Approving plan showing signal protection and crossing of Quebec Central Ry. by C.N. Rys. at Carrier, Que.

52382. Oct. 23—Authorizing Quebec Central Ry. to remove agent at Breakeyville, Que., (Caretaker to be appointed).

52383. Oct. 23—Approving concrete pipe line conduit conveying fuel oil and gasoline from Oil Wharf, across C.N. Rys. tracks, to storage tanks of Imperial Oil, Ltd., at Prince Rupert, B.C.

52384. Oct. 23—Directing C.N. Rys. to construct a farm crossing for George Clarke, at Swan River, Ont.

52385. Oct. 23—Relieving C.P.R. from maintaining cattle guards at crossings at mileage 78·90, 81·25, and 83·90 in Tp. Calvin, Ont.

52386. Oct. 25—Amending Order 51621, Dec. 22, 1934, to provide that C.P.R. install new automatic bell and wigwag at crossing at Bath, N.B.

52387. Oct. 28—Permitting G. C. Ransom, Agent, to cancel on one day's notice, the rate of $1.12 on dates and figs, carloads, via all-rail route from Montreal Wharf, to Winnipeg, published in Supp. 36 to tariff C.R.C. No. 569, Item 628.

52388. Oct. 26—Declaring C.N. Rys. crossing, first north of Brainerd, Man., protected to Board's satisfaction.

52389. Oct. 26—Declaring London & Port Stanley Ry. crosing just south of Stop 5 Shelter, Co. Middlesex, Ont., protected to Board's satisfaction.

52390. Oct. 26—Declaring Vancouver, Fraser Valley & Southern Ry. crossing of Renfrew Street, Vancouver, B.C., protected to Board's satisfaction so long as speed limitation of 10 miles an hour is in effect.

52391. Oct. 26—Approving Supp. 2 to agreement between Bell Telephone Co. and Clarence Telephone Co., Ltd.

52392. Oct. 30—Authorizing C.P.R. and C.N. Rys. to operate over their crossing at Coniston, Ont., without stopping.

52393. Oct. 26
52394. Oct. 31
52395. Oct. 26
52396. Oct. 26
52397. Oct. 28
52398. Oct. 28
Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3 tolls published in Supplements and tariffs filed by the Dominion Atlantic Ry. under Sec. 9.

52399. Oct. 28—Striking out words "Cents per 100 pounds" wherever they appear in Order 52141, Aug. 7, 1935, and substituting therefor the words "per barrel"—Maritime Freight Rates.

52400. Oct. 28—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in Tariff C.R.C. No. 979, filed by Dominion Atlantic Ry. under Sec. 9.

52401. Oct. 30—Authorizing C.P.R. to operate their trains over crossing of C.N. Rys. at Coldwater, Ont., without stopping.

52402. Nov. 1—Permitting Frank Van Ummersen, Agent, to file, upon one day's notice, an amendment to Tariffs C.R.C. Nos. 208 and 233, to correct an error.

52403. Oct. 31—Declaring C.P.R. Crossing of Main Street, Chesterville, Ont., protected to Board's satisfaction.

52404. Oct. 31—Declaring C.P.R. crosing, second west of Cadorna Station, Que., protected to Board's satisfaction.

52405. Oct. 31—Authorizing B.C. Dep't Public Works to construct highway crossing over C.P.R., near Blueberry, B.C.

52406. Oct. 31—Authorizing Ont. Dep't Northern Development to construct highway crossing over C.P.R. at corners of Wainwright, Eton, Van Horne and Aubrey Tps., Dist. Kenora, Ont.

52407. Nov. 1—Authorizing C.P.R. to reconstruct bridge No. 104·6 Quoieek Creek, Thompson Subd'n, B.C.

52408. Nov. 1—Refusing application C.N. Rys. for abandonment of operation of portion of their St. Martins Subd'n, between Hampton and St. Martins, a distance of 28·75 miles.

52409. Oct. 31—Authorizing C.P.R. to cross extension of Seventh Avenue, Blairmore, Alta., and close crossing at Fifth Avenue.

52410. Nov. 1—Authorizing Town of Drummondville, Que., to construct extension of Cockburn Street across C.P.R.

DEC 7 1935
UNIVERSITY OF TORONTO

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXV. **Ottawa, November 28, 1935** **No. 18**

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Dangerous Practices of Motorists, Drivers of other Vehicles, and Pedestrians at Protected Crossings

In many cases accidents at highway crossings are due to the negligence of those driving automobiles and other vehicles and of pedestrians. This negligence is found both at unprotected and protected crossings.

The Canadian National Railway lines from January 1, 1935, to October 31, 1935, show eighty-six cases where there was danger at protected crossings due to the negligence of those using the crossings.

The Canadian Pacific Railway (Eastern Lines) from February 1, 1935, to October 31, 1935, and (Western Lines) from January 1, 1935, to September 30, 1935, show a total of one hundred and eighty-two cases.

Notwithstanding safety devices and cautionary signals, people take chances and disregard safety. Motor accidents are becoming more frequent. Every sane motorist deplores this.

The Board hopes that the press will give as much publicity as possible to what is covered in the statement, with the hope that it may educate motor drivers and others to be more careful at crossings.

If accidents are to be lessened, the sane motorist must educate the culpably negligent motorists, some of whose actions are recorded in the following lists:—

CANADIAN NATIONAL RAILWAY LINES

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Jan. 12.....	20.30 K.....	Public Crossing M.P. 87·3, Drumheller Sd., Alta.	.....	Motorist attempted to pass over crossing before rear end of train had passed.
" 15.....	20.20 K.....	Sixth St. Crossing, Brandon, Man.	58009.....	Coming over crossing when red light against him.
" 15.....	20.15 K.....	Water Street, Winnipeg, Man.	11–563.....	Ran by red light.
" 17.....	.....	Water Street, Winnipeg, Man.	7–879.....	Ran by red light.
" 18.....	.....	Public Crossing 104th St. and 104th Ave., Edmonton, Alta.	Alta. C–6–047...	Truck parked at insufficient clearance of track.
" 22.....	.....	1st Ave. West, Prince Albert, Sask.	Sask. 18–007....	Auto attempted to cross ahead of approaching train.

CANADIAN NATIONAL RAILWAY LINES—*Continued*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Jan. 24.....	17.00 K.....	Water St., Winnipeg, Man.	Man. 24789.....	Ran by red light.
" 26.....	19.00 K.....	Water St., Winnipeg, Man.	Man. 25293.....	Ran by red light.
Feb. 7.....	12.50 K.....	95th St. Crossing, Edmonton, Alta.	Alta. C–5657....	Auto ran into crossing gates.
" 12.....	24.55 K.....	Water St., Winnipeg, Man.	Man. 2–899.....	Ran past red light.
" 20.....	18.00 K.....	First Ave. Crossing East, Prince Albert, Sask.	C.V. 1941.....	Auto drove past stop sign.
" 21.....	17.30 K.....	Water St., Winnipeg, Man.	Man. 23611.....	Ran by stop disk.
" 25.....	10.05 K.....	Temp. private crossing M.P. 61·3 Drumheller Subd'n., Alta.	Alta. B–3982....	Drove onto crossing in front of train.
Mar. 2.....	9.30 p.m...	Essa Rd., Allandale, Ont.	Ont. L–6416.....	Auto failed to stop and ran through gate breaking south-east arm. Gates lowered while auto 150 feet from crossing. Roadway very slippery.
" 9.....	14.58 K.....	Public Crossing M.P. 5·4, Red Deer Subd'n., Alta.	.....	Drove wagon across tracks before making sure crossing was clear.
" 13.....	5.13 a.m...	Bronson Ave., Ottawa, Ont.	Que. T–1600.....	Driving into crossing gates. Taxi driver not exercising proper care in view of street conditions.
" 13.....	5.52 K.....	First Ave. East, Prince Albert, Sask.	Sask. 18157.....	Drove past when sign against him when west wayfreight backing into yard.
" 14.....	12.30 a.m...	Mill St., St. John, N.B...	N.B. J–5638.....	Broke tip of lowered south-east gate controlling Long Wharf track.
" 16.....	6.20 K.....	102nd Ave., Edmonton, Alta.	B–3–673.....	Truck travelling at excessive speed, and could not stop. Struck by train.
" 26.....	3.45 p.m...	Pape Ave., Toronto, Ont..	K–6239.....	Ignored gate being lowered.
" 26.....	17.55 K.....	Public Crossing M.P. 22·13 Drumheller Subd'n., Alta.	.....	Attempted to drive wagon across tracks before making sure that crossing was clear.
" 28.....	.....	Riverside Drive, north end Sask. River Bridge, Prince Albert, Sask.	PSV–123.....	Auto did not stop for approaching train. Necessary to apply emergency brake to stop train.
" 27.....	15.23 K.....	First Ave. East, Prince Albert, Sask.	CV–354.....	Drove past stop sign when engine backing over crossing.
April 5.....	11.45 p.m...	Front St., Bathurst Stn., Ont.	EE–11.....	Auto struck southwest gate breaking off 10 feet. Driver did not stop.
" 7.....	6.20 a.m...	Pitt St., Cornwall, Ont...	Y–3703.....	Drove through lowered gates.
" 9.....	17.15 K.....	Water St., Winnipeg, Man.	Man. T. 1972....	Drove past stop signal.
" 12.....	2.32 p.m...	Highway No. 12, 2 miles west of Victoria Hab'r, Ont.	1004–C.....	Truck drove onto crossing immediately ahead of train. Just missed being struck by inches.
" 17.....	18.14 K.....	First Ave. East, Prince Albert, Sask.	Sask. 2893.....	Drove past stop signal.
" 19.....	8.20 p.m...	Public Crossing at M. 23·8, Milton Sd., Ont.	45098–C.....	Truck driver paid no attention to approaching train until close to crossing. Skidded 25 feet to avoid being struck by train.
" 19.....	11.55 a.m...	Essa St., Allandale, Ont..	EO–633.....	Ran into lowered gates breaking northwest arm. Driver failed to notice gates were down.
" 20.....	4.25 p.m...	Ridout St., London, Ont..	S–8082.....	Auto failed to stop when gates were lowered. Ran into and broke them off.
" 20.....	7.42 p.m...	Queen St., Chatham, Ont.	N–3181.....	Smashed through lowered gates.
" 23.....	.....	Strachan Ave., Bathurst Stn., Ont.	J–8152.....	Ignored gates while lowered.
" 26.....	11.30 p.m...	Front St., Bathurst Stn., Ont.	Y–5425.....	Ignored gates while lowered.
" 28.....	10.45 a.m...	Broadway Ave., Winnipeg, Man.	Ont. CE–525....	Auto struck arm of gate when stopping.
" 30.....	14.58 K.....	First Ave. East, Prince Albert, Sask.	CV–76.....	Drove past stop signal.

CANADIAN NATIONAL RAILWAY LINES—*Continued*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
April 30	.....	Lindsay St., Drummondville, Que.	F. 11021	Truck struck south gate while same being lowered.
May 1	18.45 K	Private crossing near Yard Office, Calgary, Alta.	Alta. C–7788	Drove onto private crossing before making sure crossing was clear.
" 6	.....	Douglas Rd., Burnaby, B.C.	B.C. 64036	Truck driven directly in front of train.
" 10	3.50 p.m.	Sherman Ave., Hamilton, Ont.	Ont. O–9023	Auto drove through crossing gates at excessive speed.
" 14	15.00 K	First Ave. East, Prince Albert, Sask.	17075	Drove past stop sign.
" 15	16.18 K	First Ave. East, Prince Albert, Sask.	17243	Auto drove past stop sign.
" 20	16.55 K	First Ave. East, Prince Albert, Sask.	3053	Auto drove past stop sign.
" 21	14.55 K	First Ave. East, Prince Albert, Sask.	14743	Auto drove past stop sign.
" 21	8.33 a.m.	Laframboise St., St. Hyacinthe, Que.	Que. 67630	Disregarded stop signal and passed too close in front of train.
" 22	7.55 K	Broadway St., Wyoming, Ont.	Ont. 3690C	Truck drove through crossing gates just ahead of train. Brakes not working properly.
June 1	10.05 p.m.	Mill St., Saint John, N.B.	J–5153	Auto broke gate going about 50 miles an hour.
" 3	10.30 a.m.	Second public crossing west of Clifton Jct., Ont.	Ont. 38764 C	Truck approached crossing at too great speed to stop, driver apparently not being alert.
" 4	.....	Gilbert's Lane Crossing, Saint John, N.B.	N.B. J–5409	Brakes slipped and auto struck gate standard breaking it near base. Gate arm was thrown across street.
" 7	9.05 a.m.	Bronson Ave., Ottawa, Ont.	Ont. 50052–C	Truck smashed through gates. Approached gates at moderate speed and could have stopped if driver had been alert.
" 20	10.30 a.m.	Main St., Ottawa East, Ont.	Ont. C–2323	Auto did not slow down sufficiently to stop on arrival at crossing where gates had been lowered.
" 20	7.00 a.m.	Davenport Rd., Bathurst Stn., Ont.	Ont. 16485	Truck approached at too great a speed when gates were down. Unable to stop.
" 19	4.14 p.m.	Ontario St., Port Hope, Ont.	Ont. S–9432	Auto parked too close to track. Train had to stop till auto was pushed clear.
" 21	8.07 K	Water St., Winnipeg, Man.	Man. 11–414	Sped through stop signal.
" 27	6.45 p.m.	Bridge St., Montreal, Que.	Que. 40519	Disregarded flagman's signal.
" 27	7.00 p.m.	Front St., Bathurst Stn., Ont.	Ont. L–7534	Auto driven between points of gates, crossing in front of engine.
" 28	.....	First Ave. East, Prince Albert, Sask.	Sask. 17436	Auto drove past stop signal.
July 4	9.40 K	Railway and highway crossing in Town of Radisson, Sask.	N.D. 35850	Tried to beat train over crossing and stalled with front wheels on crossing.
" 15	.....	South King St., Weston, Ont.	Ont. 17124 C	Truck ran away and damaged gates. Brakes not set during absence of driver.
" 22	9.41 K	Ave. H public crossing, Saskatoon, Sask.	Sask. 61–132	Auto failed to stop clear track. Ran into side of tender.
" 27	17.18 K	First Ave. East, Prince Albert, Sask.	Sask. 55277	Auto drove past stop signal.
" 27	9.30 a.m.	Notre Dame St., St. Cesaire, Que.	Que. FM–1864	Truck carrying 14 persons failed to make statutory stop, disregarding stop signal; collided with train.
" 29	17.10 K	First Ave. East, Prince Albert, Sask.	Sask. T–203	Truck drove past stop sign.

CANADIAN NATIONAL RAILWAY LINES—*Concluded*

Date and District	Time	Crossing	Licence No. of Auto	Dangerous Practices
Aug. 17.....	14.00 K.....	Sixth St., Brandon, Man..	Man. 56684.....	Going over crossing despite stop sign.
" 19.....	12.40 p.m...	Winchester St., Bathurst Stn., Ont.	Ont. 7805–6.....	Auto backed into base of gates damaging them.
" 21.....	6.30 a.m...	Mill St., Saint John, N.B.	N.B. J–5179.....	Auto ran into lowered gates breaking two tips.
" 24.....	16.50 K.....	Public crossing south of Ardley, Alta.	Alta. B 2–667...	Truck driver attempted to drive over crossing while caboose standing foul of crossing. Struck by train.
" 29.....	9.30 a.m...	First public crossing north of Washago, Ont.	Ont. KT–880....	Auto approached at high speed, skidded about 40 feet then tried to cross ahead of engine and struck tender step.
Sept. 6.....	2.40 p.m...	Wallace Ave., Bathurst Stn., Ont.	Ont. FP–43.....	Drove auto through lowered gates. Bell ringing.
" 12.....	3.22 p.m...	Regional Highway Chamboard to Lac Bouchette at DeQuen, Que.	Que. T/3556.....	Auto drove onto crossing and ran into side of engine.
" 17.....	4.40 p.m...	Victoria Ave., Lindsay, Ont.	Ont. EE–367....	Auto parked at ends of ties parallel with tracks. Train had to be stopped to avoid striking auto.
" 21.....	7.40 p.m...	Dundas St., Oakville, Ont.	Ont. NC–623....	Drove auto into crossing gates breaking points.
" 25.....	8.00 a.m...	Queen St., Ottawa, Ont..	Ont. 66346–C....	Truck ran into lowered gates.
" 26.....	.....	Sixth St., Brandon, Man..	Man. T8–241....	Ignored stop signal.
" 27.....	10.38 K.....	M.P. 22·7 Rosetown Subd'n., Delisle, Sask.	.....	Train had to pull air to avoid striking truck load of wheat. Cardboard in window of truck door nearest train.
" 27.....	1.05 p.m...	Pinnacle St., Belleville, Ont.	Ont. F–60.....	Auto struck crossing gate.
Oct. 1.....	10.50 a.m...	Weston Rd., Bathurst Stn. Ont.	Ont. 65269–C....	Truck drove onto crossing after two gates were lowered and other gates were being lowered.
" 5.....	20.30 K.....	First Ave. East, Prince Albert, Sask.	Sask. 16819.....	Auto drove past crossing watchman nearly striking him and colliding with box car.
" 7.....	.....	M.P. 30·6 Lac Ste. Anne Subd'n., Edmonton, Alta.	B–35–3–489.....	Truck ran into train breaking cylinder cock and bending pilot step on engine.
" 12.....	14.40 K.....	Fifth St. West, Red Deer, Alta.	Alta. 31–125.....	Attempted to cross track without ascertaining if same clear. Ran into rear of train.
" 7.....	12.40 K.....	Sixth St., Brandon, Man..	Man. 58–198.....	Ignoring stop signal.
" 18.....	19.45 K.....	Sixth St., Brandon, Man..	Man. 57–135.....	Auto ran past stop light.
" 18.....	8.49 p.m...	Greenwood Ave., Bathurst Stn., Ont.	Ont. B–173.....	Auto failed to observe signals. Ran through crossing gates.
" 22.....	19.45 K.....	Sixth St., Brandon, Man..	Man. 58–233.....	Auto ran over crossing against red light.
" 29.....	8.38 a.m...	Mountain St., St. Tite, Que.	Que. L–4673.....	Auto attempted to drive over track dangerously close ahead of train.
" 29.....	6.30 a.m...	National Highway between M.P. 30 and 31, Roberval Subd'n., west of St. Felicien, Que.	Que. 91941.....	Automobile ran into side of Diesel Car.

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
New Brunswick District 1935				
Feb. 1	12.35 p.m.	Douglas Ave., Saint John	J-7675	Passed under gates as they were coming down. Bell was ringing.
Feb. 4	11.00 a.m.	Douglas Ave., Saint John	CJ1655	Ran under gates as they were being lowered, causing delay in getting gates closed. Bell was ringing.
Feb. 15		Fairville Crossing	CJ-313	Went by crossing watchman when flagging.
Feb. 25	7.38 a.m.	Douglas Ave., Saint John	CJ-218	Passed under gates as they were coming down. Bell was ringing.
March 13		Douglas Ave., Saint John	J-1094	Drove under gates when almost down. Bell was ringing.
March 22		Fairville Crossing	CJ-111	Truck nearly knocked crossing watchman down when flagging.
March 22		Fairville Crossing	J-3080	Watchman held "Stop" signal up, but car would not stop.
March 29		Fairville Crossing	CJ-280	Truck almost ran into engine, had bad brakes, was flagging at the time.
March 29		Fairville Crossing	2951	Car would not stop on account of poor vision, did not see crossing watchman.
April 1	8.30 a.m.	Douglas Ave., Saint John	J-1440	Car passed under gates as they were being lowered. Bell was ringing.
April 1		Fairville Crossing	J-7240	Did not stop, claimed did not know what signal signified.
April 13		Fairville Crossing	J-3147	Car went under gates and would not stop Bell was ringing.
April 15	10.58 a.m.	Douglas Ave., Saint John	575	Boy riding bicycle passed under gates after they were down, before train passed.
May 3		Main St., Fairville Crossing.	J-3339	Drove under gates as they were being lowered.
May 9	7.40 a.m.	Douglas Ave., Saint John	Mass. 146391	Stopped while under gate at east side, causing delay in getting the gate down.
June 5		Main St., Fairville Crossing.	J-1315	Stopped on crossing, then started and went through gates.
June 6		Main St., Fairville Crossing.	S-2377	Backed out of side street onto crossing and went over the crossing while the bell was ringing.
June 8		Main St., Fairville Crossing.	J-1613	Went through gates while bell was ringing.
July 11	11.34 a.m.	Douglas Ave., Saint John	J-5616	Drove under gates as they were being lowered and almost down. Bell was ringing at the time.
July 19	7.00 a.m.	Douglas Ave., Saint John	J-6217	Drove under gates as they were being lowered. Bell was ringing at the time.
Aug. 12	9.00 a.m.	Douglas Ave., Saint John	F-5521	Drove under gates as they were being lowered. Bell was ringing at the time.
Aug. 24		Main St., Fairville	CJ-442	Drove under gates as they were being lowered.
Aug. 26		Main St., Fairville	R-1311	Drove under gates as they were being lowered.
Sept. 8	10.32 a.m.	Douglas Ave., Saint John	J-6685	Passed under gates as they were almost down. Bell was ringing at the time.
Sept. 13		Main St., Fairville	CJ-485	Drove under gates as they were being lowered.
Oct. 11	1.56 p.m.	Douglas Ave., Saint John	CJ-303	Drove under west gate, causing delay in getting same down. Bell was ringing at the time.
Oct. 13	9.57 a.m.	Douglas Ave., Saint John	J-4718	Drove under east gate, causing delay in lowering same. Bell was ringing at the time.

CANADIAN PACIFIC RAILWAY—EASTERN LINES—*Continued*

Date and District	Time	Crossing	Licence No. of Auto	Dangerous Practices
QUEBEC DISTRICT 1935				
Feb. 26.....	.....	Crown St., Quebec.....	Que. T-935.....	Gates had been lowered for incoming train, when auto travelling from south to north, struck and broke both gates on south side. Driver stopped on crossing, then backed up to clear. Warning bell had been sounded previous to gates being lowered and lamps on gates were burning brightly.
March 24.....	.....	Crown St., Quebec.....	Que. T-1087.....	Gates had been lowered for outgoing train, when taxi, travelling from north to south, struck north west gate, breaking it and went over crossing, also striking and breaking south west gate. Taxi stopped beyond crossing and driver stated to signalman that accident was due to faulty brakes on his car.
May 10.....	7.30 a.m...	Elmhurst Ave., Montreal.	Que. 36451.....	While moving from north to south over crossing automobile struck and damaged northwest gate arm.
May 26.....	10.05 p.m...	Bridge St., Quebec.....	Que. H-1698....	Gateman was raising gates which had been lowered for yard engine. The south side gate had been raised, but before the north side gate could be raised, automobile running from north to south moved onto crossing and struck and damaged north side gate.
July 5.....	6.45 p.m.,.	Elmhurst Ave., Montreal.	Que. H-19055...	Automobile moving from south to north struck and damaged southeast gate arm. Gates had been lowered to protect train movement over crossing.
July 12.....	3.00 p.m...	Crown St., Quebec.....	Que. L-311.....	Gateman had lowered crossing gates on south side and was in act of lowering the north side gates when auto moving from north to south moved onto crossing and struck and damaged the southwest arm.
July 13.....	7.15 p.m...	Elmhurst Ave., Montreal.	Que. 27900.....	Automobile moving from south to north approached crossing after gates had been lowered for train movement and failed to stop, striking and breaking southeast gate arm.
Aug. 22.....	3.30 p.m...	Rockland Ave., Outremont.	Que. 33299.....	After gateman had lowered south gate and was lowering north gate for movement of yard engine, automobile moving from north to south moved under descending gate barrier, which came in contact with top of car, causing slight damage to leather binding on left side of top.
Aug. 25.....	7.15 p.m...	Elmhurst Ave., Montreal.	.....	While gates were being lowered, automobile running from south to north, moved onto crossing and came in contact with northeast gate arm, breaking same. The chauffeur drove off before gateman could take license number of car.

CANADIAN PACIFC RAILWAY—EASTERN LINES—*Continued*

Date and District	Time	Crossing	Licence No. of Auto	Dangerous Practices
QUEBEC DISTRICT—*Con.* 1935				
Sept. 8.....	.....	Cote de Liesse, Dorval....	Que. 34413.....	Automobile owned by Mr. Ben son, Outremont, drove into fence on right-hand side, west-bound track, breaking fence post. Post replaced by C.N.R.
Oct. 1.....	5.27 a.m...	Crown St., Quebec.....	.....	After crossing gates, both sides, had been lowered for movement of freight train, an automobile running from north to south, failed to stop and broke the northwest gate barrier and continued on, breaking southwest gate barrier. Gateman on duty was unable to take license number of same.
Oct. 17.....	10.15 p.m...	Elmhurst Ave., Montreal.	.....	After gates had been lowered, an automobile moving from south to north, failed to stop and the southeast gate barrier was broken. The auto did not stop and gateman, who raised the northeast barrier to prevent it from being damaged was unable to obtain the license number of car.
ONTARIO DISTRICT				
Feb. 9.....	3.00 a.m...	Richmond St., London....	R-4286.....	Auto slid thirty feet into gate arm breaking same and stopped on tracks in front of yard engine and was nearly struck.
Feb. 10.....	.....	Symington Ave., Toronto.	M-1259.....	While all gates lowered for train movement, auto travelling south, ran into and broke point off northeast gate.
Feb. 14.....	11.55 p.m...	Pall Mall St., London....	S-6275.....	Driver of auto stated in fog he did not see lowered gate arms in time to stop and slid into east gate arm, breaking it. Crossing bell ringing and gate lanterns burning at time.
Feb. 15.....	12.25 p.m...	Richmond St., London....	A-7925.....	Driver of auto disregarded watchman's stop signal and auto struck by cars being pushed by yard engine, slightly injuring occupants of car.
Feb. 16.....	7.50 a.m...	Eramosa Rd., Guelph.....	BY-363.....	Auto skidded 104 feet, striking gate arm, breaking same.
Feb. 18.....	.....	Front St. and Spadina Ave., Toronto.	L-4931.....	Auto proceeding south on Spadina Ave., east on Front St., struck No. 5 gate stand, south half, breaking stand and part of gate and damaging two lamps. Gates were up at the time.
March 6.....	12.05 p.m...	Richmond St., London....	S-966.....	Auto struck gate arm being lowered for approach of passenger train. Bell ringing.
March 7.....	8.20 p.m...	Waterloo St., London.....	S-4923.....	Auto skidded on icy roadway into gate arm, breaking same. Gates were down, bell ringing and gate lanterns burning.
March 12.....	.....	Church St., Weston.....	M-5168.....	While gates were lowered for C.N.R. train movement, auto smashed through east gate, breaking it off.
March 18.....	2.25 p.m....	Waterloo St., London.....	S-1496.....	Auto ran into and broke northwest gate arms. Brakes defective on auto.

CANADIAN PACIFIC RAILWAY—EASTERN LINES—*Continued*

Date and District	Time	Crossing	Licence No. of Auto	Dangerous Practices
ONTARIO DISTRICT—*Con.* 1935				
March 22		Osler Ave., Toronto	L–5102	While gates were lowered for train movement, auto ran into crossing gate, breaking barrier on south side.
March 24		John St., Toronto	L–4870	While gates were lowered for train movement, auto ran into and damaged northeast barrier.
March 27	5.27 p.m.	Richmond St., London	CD–128	Gates had been lowered when auto going north ran through gate arm, breaking same. Auto had very poor brakes.
April 18	3.25 p.m.	First public crossing east of Blyth.	DU–581	Auto failed to hear automatic crossing bell ringing or engine whistle and skidded 40 feet on to track and was struck by train.
April 18	2.45 p.m.	Richmond St., London	S–5393	Auto disregarded watchman's stop signal and crossed tracks in front of a yard engine.
April 23	4.00 p.m.	Queen St., Chatham	27777–C	While gates being lowered and with crossing bell ringing, auto ran into gate arm, breaking same.
May 17	11.33 a.m.	Richmond St., London	BL–812	Auto disregarded watchman's stop signal and crossed tracks in front of yard engine.
May 19	3.53 a.m.	William St., Chatham	AB–44	Auto crashed through crossing gate arm which was down and was struck by engine on passenger train.
May 31	1.55 p.m.	Waterloo St., London	S–1750	Auto failed to notice crossing bell ringing and drove under crossing gate arms which were being lowered and was locked in between gates for a moment.
June 1	4.17 a.m.	William St., Chatham		Auto without lights ran through northwest gate arm and was nearly struck by passenger train and after crossing tracks crashed through southwest gate arm.
June 7		Church St., Weston	Ont. 17841–C	While crossing gates were being raised, motor truck, started over crossing before gate clear of truck, causing damage to gate.
June 13	11.35 a.m.	Richmond St., London	D–2944	Driver of auto disregarded watchman's stop signal and crossed tracks in front of switch engine.
June 17		Front St. and Spadina Ave., Toronto.	Ont. 19929–C	After all gates had been lowered for movement of yard engine, motor truck stopped in Direct Service Station, backed into crossing gate at entrance to service station, breaking point of gate.
June 18		Front St. and Spadina Ave., Toronto.	Ont. 16437–C	While lowering gates for movement of hand car, motor truck which had stopped on east side of crossing, started over crossing before gate properly lowered, breaking point and axle of gate.
June 25	5.00 a.m.	Richmond St., London		Auto approached crossing too fast and skidded into lowered gate arm, breaking it.

CANADIAN PACIFIC RAILWAY—EASTERN LINES—*Concluded*

Date and District	Time	Crossing	Licence No. of Auto	Dangerous Practices
ONTARIO DISTRICT—*Con.*				
1935				
June 29.....	5.15 a.m...	Richmond St., London....	S-1864.....	While gates being lowered for yard engine to cross auto drove under gate arm, breaking lantern and cracking gate arm, also damaging roof of auto.
Aug. 11.....	5.40 a.m...	Richmond St., London....	S-3086.....	Auto skidded into northwest gate, breaking it off at stand.
Aug. 23.....	6.25 p.m...	Adelaide St., London.....	S-5800.....	Auto passed stop sign when yard engine approaching crossing.
Aug. 27.....	.....	Front St. and Spadina Ave., Toronto.	Ont. 62914-C....	While all gates were up and locked in normal position, motor truck struck northeast gate when making right-hand turn off Spadina Ave. on to Front St., breaking gate arm.
Sept. 2.....	.....	Front St. and Spadina Ave., Toronto.	Ont. E-953.....	While all gates up and locked in normal position, automobile travelling west on Front St., struck weights on No. 5 gate, breaking casting on gate arm.
Sept. 4.....	12.15 a.m...	Richmond St., London....	S-4793.....	Auto skidded on wet pavement and ran into and broke northwest gate arm which had been lowered for approach of a passenger train.
Sept. 26.....	7.25 p.m...	Richmond St., London....	S-5983.....	Auto passed another auto standing at crossing where gates were down and crossing bell ringing and ran into and broke southeast gate arm.
Sept. 27.....	.....	John St., Toronto.....	Ont. 22022-C....	While gates being lowered for movement of yard engine, motor truck proceeding north on John St., ran into and damaged southeast gate.
Oct. 5.....	7.38 p.m...	Adelaide St., London.....	T-1544.....	Auto turned out and passed car standing at crossing to let passenger train go by and this auto stopped on north rail of main line and crossing watchman had to ask him to back up clear of crossing.
ALGOMA DISTRICT—				
Feb. 23.....	11.30 a.m...	Elm St., Sudbury.....	55436-C.....	Northeast gate broken. Bell ringing and gates down.
Feb. 28.....	11.15 a.m...	" "	55001-C.....	Southeast gate broken. Bell ringing and gates down.
March 3.....	9.45 a.m...	" "	LB-141.....	Southwest gate broken. Bell ringing and gates down.
Aug. 18.....	8.20 a.m...	" "	LC-373.....	Vehicle drove into and broke southeast gate. Bell was ringing at the time.
Sept. 16.....	8.35 a.m...	" "	54733-C.....	Vehicle drove into and broke southeast gate. Bell was ringing at the time.
Oct. 13.....	9.10 p.m...	" "	LB-197.....	Vehicle drove into and broke both south gates. Bell was ringing at the time.

Date and District	Time	Crossing	Licence No. of Auto	Dangerous Practices
MANITOBA DISTRICT 1935				
April 4.....	1.15 K.....	Norman Crossing, M.P. 1.75 Keewatin Sub.....	Had no licence No.....	Ford truck ran into train while latter passing over crossing.
SASKATCHEWAN DISTRICT				
Jan. 21.....	18.15 K.....	Broadway, Yorkton.....	22–170.....	Regardless of stop signal, drove across in front of engine.
Feb. 23.....	15.10 K.....	" "	22–375.....	Stopped car when he saw stop signal but started up again when he figured he had sufficient time to clear and crossed over just ahead of engine.
March 18.....	13.15 K.....	" "	FV–706.....	Regardless of stop signal, crossed over just ahead of engine.
March 19.....	18.15 K.....	" "	22–279.....	Regardless of stop signal drove across in front of engine. Was so close engineer made quick stop.
April 3.....	16.30 K.....	" "	28–305.....	Regardless of stop signal drove in front of engine.
April 4.....	17.00 K.....	" "	23–597.....	" "
April 3.....	16.45 K.....	" "	CV–969 (1934)...	" "
April 6.....	16.45 K.....	" "	33–578 (1934)....	" "
April 9.....	15.30 K.....	" "	28–302.....	" "
April 17.....	16.40 K.....	" "	25–671.....	" "
April 20.....	20.00 K.....	" "	22–749 (1934)....	" "
April 20.....	20.20 K.....	" "	20–347.....	Regardless of red light drove in front of engine.
April 27.....	20.20 K.....	" "	41–444.....	" "
April 30.....	18.40 K.....	" "	22–279.....	Regardless of stop signal, drove in front of engine.
May 2.....	19.25 K.....	" "	19–848.....	Regardless of red light, drove in front of engine.
May 7.....	15.50 K.....	" "	41–451.....	Regardless of stop signal drove in front of engine.
May 7.....	16.45 K.....	" "	19–653.....	" "
May 14.....	16.00 K.....	" "	15–478.....	" "
May 14.....	17.00 K.....	" "	FV–204.....	" "
May 16.....	19.25 K.....	" "	34–369.....	" "
May 18.....	17.05 K.....	" "	645.....	" "
May 21.....	15.35 K.....	" "	41–295.....	" "
May 25.....	18.20 K.....	" "	16–208.....	" "
May 28.....	16.10 K.....	" "	20–324.....	" "
May 30.....	15.20 K.....	" "	46–460.....	" "
May 30.....	18.40 K.....	" "	20–193.....	" "
May 31.....	19.25 K.....	" "	D–335.....	" "
June 3.....	19.25 K.....	" "	41–870.....	" "
June 6.....	16.25 K.....	" "	46–251.....	" "
June 12.....	15.20 K.....	" "	CV–884.....	" "
June 25.....	18.30 K.....	" "	5–443.....	" "
June 28.....	14.25 K.....	" "	20–256.....	" "
July 1.....	14.35 K.....	" "	19–679.....	Regardless of stop signal, drove across in front of engine.
July 3.....	19.25 K.....	" "	20–057.....	" "
July 6.....	15.55 K.....	" "	CV–574.....	" "
July 6.....	20.05 K.....	" "	41–122.....	" "
July 7.....	15.45 K.....	" "	41–422.....	" "
July 12.....	16.20 K.....	" "	7–893.....	" "
July 12.....	17.10 K.....	" "	28–323.....	" "
July 15.....	19.25 K.....	" "	6–066.....	" "
July 16.....	16.25 K.....	" "	20–246.....	" "
July 16.....	18.05 K.....	" "	21–847.....	" "
July 17.....	15.15 K.....	" "	847.....	" "
July 17.....	16.10 K.....	" "	19–972.....	" "
July 18.....	16.20 K.....	" "	8–164.....	" "
July 18.....	19.10 K.....	" "	19–952.....	" "
July 23.....	16.50 K.....	" "	19–888.....	" "
July 19.....	19.25 K.....	" "	49–043.....	" "
July 23.....	17.00 K.....	" "	FV–669.....	" "
July 25.....	16.50 K.....	" "	41–057.....	" "
July 30.....	14.20 K.....	" "	19–728.....	" "

CANADIAN PACIFIC RAILWAY—WESTERN LINES—*Concluded*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
SASKATCHEWAN DISTRICT—*Con.* 1935				
Aug. 1	12.02 K.	Winnipeg St., Regina	25–878	Ford coupe drove over crossing when bell and wigwag working, resulting in being struck by train.
Aug. 2	19.20 K.	Broadway, Yorkton	38–615	Regardless of stop signal, drove across in front of engine.
Aug. 6	19.25 K.	" "	41–402	" "
Aug. 8	19.25 K.	" "	37–612	" "
Aug. 9	17.05 K.	" "	19–937	" "
Aug. 13	16.40 K.	" "	43–975 (Alta.)	" "
Aug. 19	15.00 K.	" "	20–100	" "
Aug. 23	17.10 K.	" "	26–1212 (Mont., U.S.A.).	" "
Aug. 27	16.50 K.	" "	19–626	" "
Aug. 28	19.25 K.	" "	41–475	" "
Sept. 3	18.00 K.	" "	20–198	" "
Sept. 3	17.10 K.	" "	28–433	" "
Sept. 4	19.25 K.	" "	41–455	" "
Sept. 7	18.30 K.	" "	39–915	" "
Sept. 10	17.30 K.	" "	19–853	" "
Sept. 13	15.45 K.	" "	19–685	" "
Sept. 17	15.10 K.	" "	19–659	" "
Sept. 21	17.15 K.	" "	19–800	" "
Sept. 22	17.00 K.	" "	5–641	" "
Sept. 23	19.00 K.	" "	19–998	" "
Sept. 28	15.40 K.	" "	46–238	" "
Sept. 28	18.45 K.	" "	54–590	" "
Sept. 28	20.30 K.	" "	19–860	" "
Sept. 21	16.26 K.	Morse	53–816	Truck load of wheat drove on to westbound track in front of engine.
ALBERTA DISTRICT				
Feb. 16	3.30 K.	2nd St., Medicine Hat	18–259	Car ran into north gate, breaking same.
July 17	15.45 K.	4th St. West, Calgary	A–22–1035	Ran into gate.
July 26	14.45 K.	" "	C–4372	"
Aug. 14	15.10 K.	" "	C–4–446	"
Aug. 16	19.30 K.	" "	16–764	"
Aug. 23	20.35 K.	" "	Unknown	"
Aug. 21	13.15 K.	" "	11–480	"
Aug. 27	11.10 K.	2nd St., Medicine Hat	C–5–146	"
BRITISH COLUMBIA DISTRICT				
May 9	13.56 K.	North Vancouver Ferry	B.C. 75486	Auto rushed under crossing gate as it was coming down and when gate on opposite side was already down.
Aug. 27	18.20 K.	Mile 0.95 Victoria Sub. (Russell St. and Esquimalt Rd. interlocker.		Automobile driven by Sing Lee (Chinese) ran into and broke east gates. Northeast gate extension arm broken, light and fittings damaged on southeast gate.
Sept. 28	14.20 K.	" "		Auto ran into standard of west gate and damaged small buffer. Gates were not operating when mishap occurred.

MISHAPS AT PUBLIC HIGHWAY CROSSINGS WHERE NO PERSONAL INJURY INVOLVED, DURING THE PERIOD JANUARY 1 TO JUNE 30, 1935

Division	Date	Location	Particulars
		MANITOBA DISTRICT	
KENORA DIVISION....	April 4...	Norman Crossing, M.P. 1.75, Keewatin Sub.	When train was passing over crossing, a new Ford V-8, ½ ton truck, no licence number, owned by J. Poirier, of Alexander Island, Lake of the Woods, driven by Carl McFadyen, 310 First St. North, Kenora, Ont., ran into side of train about the middle, while travelling north en route Kenora to Keewatin. No damage to train. Truck considerably damaged.
BRANDON DIVISION..	Jan. 3...	Second Crossing, west of Alexander Station, Mileage 16, Broadview Sub.	When train No. 4, engine 2819, was approaching crossing, cutter driven by V. Shore, Alexander, Man., stopped with horse just foul of track. Horse was struck on nose and was killed. Shaft of cutter damaged.
		SASKATCHEWAN DISTRICT	
MOOSE JAW DIVISION	Jan. 17...	Crossing at Mileage 1½, Expanse Sub.	Extra North, Engine 687, struck horse at public crossing. Team was attached to milk wagon and driven by Harold Doney of Boharm, who stated did not see or hear train approaching due to windows of wagon being heavily frosted over. Buffer beam of engine scraped left shoulder of horse, and wagon tongue was broken.
	Feb. 28...	Crossing at Mileage 68.5, Wynyard Sub.	When approaching Sheho at speed of about ten miles per hour, struck Ford coupe, 1930 model, bearing Saskatchewan 1934 Licence No. 43-296, on Crossing No. 14 Highway. Car had been occupied by driver and his sister, who got out after stalled on crossing, after brakes had been applied.
		ALBERTA DISTRICT	
MEDICINE HAT DIVISION.			
	Feb. 7...	Duchess.....	Sleigh owned by Mr. Frank Custy struck by Extra 5182 West.
	June 3...	M. 37.4 Maple Creek Sub....	Tractor owned by F. L. Rushford, struck by 1st No. 72, engine 5129.
LETHBRIDGE DIVISION	Mar. 11...	13th St. South, Lethbridge..	Auto driven by S. Slinn, Alta., Licence No. 23-144, ran into side of car next to engine 6284—yard service.
	May 6...	M. 45, Macleod Sub.....	Train No. 541 struck the two leading horses of an eight-horse team owned by Mr. J. W. Stevenson and driven by his hired man.
	June 13...	M. 43.86, Macleod Sub.....	Train No. 541 struck Ford truck, Alta. Licence No. B-2130, driven by L. G. Heywood.
CALGARY DIVISION...	April 25...	M. 1.3, Red Deer Sub.....	Yard engine 6282 struck trailer attached to Chrysler automobile driven by R. D. Gentry.
	June 13...8	th St. East, Calgary.....	Train No. 4, engine 2819, struck Ford truck, Alta. Licence No. A-167, driven by O. L. Lahd.
EDMONTON DIVISION.	Feb. 13...	M. 16.9, Hoadley Sub.....	Train No. 616, engine 880, struck Chevrolet automobile driven by A. L. Basher, Alta., Licence No. 4-382.
	Feb. 18...	M. 61.8 Willingdon Sub.....	Sleigh, owned and driven by M. Iwanciw, struck by train No. 64, engine 2592.

MISHAPS AT PUBLIC HIGHWAY CROSSINGS WHERE NO PERSONAL INJURY INVOLVED, DURING THE PERIOD JANUARY 1 TO JUNE 30, 1935—*Conc.*

Division	Date	Location	Particulars
		BRITISH COLUMBIA DISTRICT	
REVELSTOKE DIVISION.	Feb. 1...	Squilax—Mile 87.37, Shuswap Sub.	Chevrolet light delivery truck, owned and driven by W. C. Hebner, Squilax, skidded on snow and stalled foul of track. Struck by 1st No. 88. Truck damaged.
	May 10...	Kelowna—Water St.....	Auto truck, owned by S. B. Penty, Penticton, driven by W. Rose, collided with CSGX tank car, which was being pushed over crossing by Chapman's switching truck. Slight damage to truck.
VANCOUVER DIVISION	Mar. 20...	Vancouver—Victoria Drive, Mile 126.8, Cascade Sub...	Auto B.C. 83–350 stopped foul of crossing and was struck by train No. 810. Left fender and bumper of auto damaged.
KOOTENAY DIVISION..	May 18...	Kimberley—Wallinger Ave..	When Kimberley Industrial Train, engine 3685, on way from concentrator to mine crusher with ten empty ore cars and caboose and travelling at a speed of about 15 miles per hour up heavy grade, auto B.C. 50–764 struck front drawbar of engine, damaging auto to extent of about $75.00. No damage to our equipment.

ESSEX TERMINAL RAILWAY

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
June 3.....	12.00 a.m...	Drouillard Rd., East Windsor, Ont.	Ont. S–4576.....	Tried to stop approaching crossing, brakes faulty. Turned into side street two car lengths from railway.
June 3.....	3.05 p.m...	Howard Ave., Windsor, Ont.	Ont. 37322–C....	Truck and trailer. In trying to avoid striking train turned into side street and ran into post. Flagman standing on crossing flagging.
Oct. 19.....	11.00 p.m...	Dougall Rd., Windsor, Ont.	Ont. V–6294.....	Auto approaching at high speed crashed through lowered gate which was lowered at time.

SUMMARY OF DANGEROUS PRACTICES OF MOTORISTS, DRIVERS OF OTHER VEHICLES, AND PEDESTRIANS AT PROTECTED RAILWAY CROSSINGS

Canadian National Railways—Canadian Pacific Railway

	Number	Per cent
Vehicle struck train or track motor	9	3·36
Vehicle ran past red light signal	9	3·36
Vehicle stopped foul of track	8	2·99
Vehicle ran into lowered crossing gates	77	28·73
Vehicle drove past stop signal	17	6·35
Vehicle drove onto crossing ahead of train	88	32·84
Vehicle drove across tracks before making sure crossing was clear	4	1·49
Vehicle struck by train	14	5·22
Vehicle drove onto crossing while gates being lowered	25	9·33
Vehicle approached crossing at too great a speed	5	1·86
Vehicle drove past flagman's signal	8	2·99
Vehicle driver failed to see crossing watchman	1	0·37
Bicycle ran under lowered gates	1	0·37
Vehicle stopped on crossing	2	0·74
	268	100·00

DEC 7 1935

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of the Canadian National Railways for an Order granting leave to abandon the operation of that portion of its Aston Subdivision, in the province of Quebec, between Victoriaville (M. 0·00) and St. Gregoire (M. 30·4), a distance of 30·4 miles.

File No. 39310

JUDGMENT

GARCEAU, DEPUTY CHIEF COMMISSIONER:

The trunk line was built by the Grand Trunk Railway Company with the assistance of the city of Three Rivers and upon certain conditions, as appears more fully in a contract dated August 20, 1858, of which a copy was filed. This contract says:—

"And whereas the said parties hereto are desirous of establishing the terms and conditions on which such aid shall be granted by the said corporation and accepted by the said company. Now therefore these presents and we the said notaries witness that:

"It is hereby covenanted and agreed by and between the said parties that the said company do hereby bind and oblige themselves to have the said railway completed and in working order on or about the first day of September, 1860, one thousand eight hundred and sixty, *and thenceforth to keep in working order, and work the said railroad at all times and seasons;* the said railway to be located this present season, and the necessary works to build it to be commenced as early as possible next spring, and its terminus to be in the said city of Three Rivers by means of a ferry steamboat during the navigation season and by the best means possible during the winter season, so as to put the city of Three Rivers in the same position with regard to the said railway as the city of Quebec is with regard to the Quebec and Richmond Railway.

"And it is hereby covenanted and agreed by and between the said parties that on the stipulations and agreement hereinbefore stated being fulfilled or in progress of being fulfilled by the said company, the said corporation do hereby bind and oblige themselves to subscribe for and take shares in the capital stock of the said company to the amount of forty thousand pounds currency. . . ."

The company's application is to abandon part of this line from St. Gregoire, six miles east of Three Rivers, up to Victoriaville, the terminus of that line. In other words, Victoriaville and intermediate stations up to St. Gregoire will be deprived of all railway communications with Three Rivers, a city of 40,000, the chief town of the county of Nicolet, an important town with industries, religious institutions, and the residence of the bishop of that Diocese which includes Victoriaville and the county of Arthabaska. It would deprive Three Rivers of direct railway communication with the whole southeastern part of Quebec, which has a population of hundreds of thousands.

As mentioned by Mr. Rand, this trunk line from Victoriaville to Doucet's Landing opposite Three Rivers connects the old Grand Trunk Railway from Richmond to Quebec, the old Intercolonial Railway, now the Canadian National Railways, from Drummondville to Nicolet and the old Quebec Southern Railway.

The Canadian National Railways, since they acquired the Southern Counties Railway in 1929, have discontinued the direct service from Victoriaville to Three Rivers, which consisted of trains leaving Victoriaville early in the morning and early in the afternoon for Three Rivers and return. At the present time, there is a train leaving Montreal in the morning around 9 a.m., reaching Victoriaville a little after two and returning from Victoriaville to Montreal at three in the afternoon, making connections each way with Doucet's Landing. It is easy to explain why this new service cannot cover its operating expenses.

People from Victoriaville and subsequent stations cannot use that train to go to Montreal or Three Rivers and return at night. This is the explanation as to why the railways have so few passengers either to Montreal or Three Rivers.

The same thing can be said about commodities which are shipped from the country to the cities in the early morning in order that they may reach the city market in time to be disposed of on the same day.

The actual service cannot serve the public for transportation either of persons or perishable commodities from Victoriaville and following stations to either Montreal or Three Rivers.

The railway has completely ignored the needs of the populous towns crossed by its line, not only from Victoriaville to Three Rivers, but also to Montreal, and thereby deprived itself of most of the passenger and express traffic.

This application, if granted, would cut Victoriaville, a city of 11,000 inhabitants, from its natural market—Three Rivers, would handicap the traffic from this city and intermediate stations to Three Rivers and Montreal.

The memoranda filed by His Excellency the Bishop of Nicolet, by the Chambers of Commerce of Three Rivers, Victoriaville, and the resolutions passed by every municipality concerned establish clearly that if this petition were granted, the economic, social and religious conditions of a large community would be virtually disrupted, at least in the winter and during part of the spring season.

The report of our Chief Operating Officer, made after full inquiry by himself and members of his staff, as to the opportunity of abandoning this line, says:—

> "We have considered the matter seriously, after listening to the delegations and representations made, and giving consideration to the needs of the community, we would recommend that the line St. Gregoire to Victoriaville be not abandoned."

The railway seems to take for granted that it is enough for them to show operating deficits when asking for leave to abandon a line. They forget that they are a public service, subsidized by the public to give the proper service in order to facilitate the interchange of commodities, and foster the prosperity of the country.

These subsidies were not paid to permit the railway to grant dividends to shareholders but to operate even at a loss, when necessary.

In this instance, it is absolutely evident that, no matter what traffic there was to be had, the railways, owing to their schedule of trains, could not have handled it, as their train service accommodates neither passengers nor freight.

It is a known fact that this trunk line was a great factor in the development of that section of the country; but, at that time, it was operated in a way to foster development, to provide a convenient service for persons and freight between Victoriaville and Three Rivers. It served also as a connecting link between the two railways, the old Grand Trunk and the I.C.R. It permitted to persons near the intermediate stations between Doucet's Landing and Victoriaville to use the main lines to go to Montreal or Quebec.

The experience of the past shows that if this trunk line were operated as it was intended to be when it was constructed, it could be an asset to the railway and the community.

Even if the railway company's situation cannot be improved, if we take into account that seventeen to twenty employees would lose their salaries, amounting to $20,000 or $24,000 (see Mr. Rand's evidence, p. 884), who would become dependent on the public, maybe to that extent, it becomes apparent that public weal outweighs the loss of the railway company.

The Canadian National Railways Company is subject to the rights and obligations of the Grand Trunk, viz: "and thenceforth to keep in working order, and work the said railroad at all times and seasons," as mentioned in the contract hereinbefore referred to.

Section 35 of the Railway Act declares:—

> . . . . "the Board *shall hear all matters* relating to such alleged violation or breach, and shall make such order as to the Board may seem reasonable and expedient, and in such order may, in its discretion, direct the company, or such corporation or person, *to do such things as are necessary for the proper fulfillment of such agreement,* or *to refrain* from doing such acts as constitute a violation or a breach thereof."

The Board has a judicial discretion to enforce the fulfillment of agreements but not to sanction by an order their violation.

Section 165-a of the Railway Act reads thus:—

> "The company may abandon the operation of any line of railway with the approval of the Board and no company shall abandon the operation of any line of railway without such approval."

It cannot ignore the agreement. Section 35 says: "shall hear all matters relating to . . . agreements." It has no discretionary authority other than to "make such order as to the Board may seem reasonable and expedient, and in such order may, in its discretion direct the company . . . to do such things as are necessary for the proper fulfillment of such agreement, or to refrain from doing such acts as constitute a violation or a breach thereof," or dismiss the application.

The application asks the Board to permit the violation of a contract but the Board has no jurisdiction to do so; even if it had, such action would not be reasonable or expedient.

I have dealt more extensively with this question in my judgment in the matter of the Canadian Pacific Railway's application for leave to abandon a portion of the Orford Mountain Railway, dated October 23, 1935 (F. 39309).

. . . . . .

Here as elsewhere motor vehicle competition has been responsible for the plight of the railways. This question was also dealt with in the above-mentioned judgment to which I refer.

I would dismiss the application.

October 25, 1935.

COMMISSIONERS NORRIS AND STONE:

While not adopting certain of the reasons for judgment of the Deputy Chief Commissioner, upon which his conclusion is based in the circumstances of this case, I agree that the application be refused.

Requête de la compagnie des chemins de fer Nationaux du Canada, demandant qu'une ordonnance soit rendue l'autorisant à discontinuer l'exploitation de la partie de sa ligne sur sa subdivision d'Aston, dans la province de Québec, entre Victoriaville (mille 0.00) et St-Grégoire (mille 30.4) soit un parcours de 30.4 milles.

Dossier N° 39310

JUGEMENT

GARCEAU, Commissaire en chef suppléant:

Cette partie du réseau de chemin de fer fut construite par la compagnie de chemin de fer Grand-Tronc, avec l'aide de la cité des Trois-Rivières et en vertu de certaines conditions, tel qu'il appert plus en détail au contrat en date du 20 août 1858, dont une copie a été produite au dossier.

Il est stipulé dans ce contrat:

> "Et attendu que lesdites parties au contrat désirent poser des conditions en vertu desquelles telle aide devra être accordée par ladite corporation et acceptée par ladite compagnie. C'est pourquoi, ces présentes, et nous, dits notaires, attestons que:
>
> "Il est par les présentes stipulé et convenu par et entre lesdites parties, que ladite compagnie de chemin de fer s'oblige et s'engage à parachever ladite ligne de chemin de fer et à la rendre en état d'exploitation le ou vers le premier jour de septembre 1860, mil huit cent soixante, et, à partir de cette date, de la maintenir en bonne condition et de l'exploiter en tout temps et en toutes saisons; le tracé de ladite ligne de chemin de fer devant se faire au cours de la présente saison et les travaux nécessaires à sa construction devant commencer aussi à bonne heure que possible le printemps prochain, et son terminus devant être dans la cité des Trois-Rivières au moyen d'un bateau-passeur durant la saison de la navigation et par les moyens les plus avantageux possibles durant la saison d'hiver, de façon à procurer à la cité des Trois-Rivières les mêmes avantages par rapport audit chemin de fer que ceux dont bénéficie la cité de Québec par rapport au chemin de fer Québec et Richmond.
>
> "Et il est par les présentes stipulé et convenu par et entre lesdites parties que par suite de l'accomplissement des stipulations et du contrat ci-dessus mentionnés, ou que par suite du progrès de tel accomplissement de la part de ladite compagnie, ladite Corporation s'oblige et s'engage par les présentes à souscrire et à se porter acquéreur d'actions du capital social de ladite compagnie pour un montant de quarante mille livres, monnaie en cours..."

La requête de la compagnie du chemin de fer est à l'effet de demander à la Commission de rendre une ordonnance l'autorisant à discontinuer l'exploitation d'une partie de sa ligne à partir de St-Grégoire qui se trouve à six milles de

Trois-Rivières, jusqu'à Victoriaville qui est le terminus de cette ligne. En d'autres termes, Victoriaville et les stations intermédiaires, jusqu'à St-Grégoire, seront privées de toutes communications par voie ferrée avec Trois-Rivières, une cité de 40,000 de population, et avec le chef-lieu du comté de Nicolet qui est aussi une ville importante possédant des industries et des institutions religieuses, étant le siège épiscopal de ce Diocèse qui comprend Victoriaville et le comté d'Arthabaska. Cette ligne n'étant plus exploitée priverait Trois-Rivières des communications directes par voie ferrée avec toute la partie sud-est de Québec qui compte une population de centaines de mille âmes.

Comme l'a dit M. Rand, cette partie de réseau de chemin de fer, de Victoriaville à Doucet's Landing situé en face de Trois-Rivières, fait raccordement avec l'ancienne ligne de chemin de fer Grand-Tronc, de Richmond à Québec, avec l'ancienne ligne de chemin de fer Intercolonial, aujourd'hui le C.N.R., de Drummondville à Nicolet, et avec l'ancienne ligne de chemin de fer Quebec Southern Railway.

La compagnie des chemins de fer Nationaux du Canada, depuis qu'elle a fait l'acquisition du chemin de fer Southern Counties Railway, en 1929, a discontinué son service direct, de Victoriaville à Trois-Rivières, qui consistait en trains partant de Victoriaville de bonne heure le matin et de bonne heure dans l'après-midi pour Trois-Rivières, pour en revenir le même jour. Actuellement, il y en a un qui part de Montréal le matin vers 9.00 heures et qui arrive à Victoriaville un peu après 2.00 heures et qui retourne en partant de Victoriaville à 3.00 heures de l'après-midi, faisant raccordement chaque fois avec Doucet's Landing. Il est facile d'expliquer pourquoi ce nouveau service ne peut rencontrer ces dépenses d'exploitation.

Le public de Victoriaville et des stations intermédiaires ne peut utiliser ces trains pour aller à Montréal ou à Trois-Rivières et en revenir le même jour; ce qui explique pourquoi il y a très peu de voyageurs qui se servent de cette ligne pour aller soit à Montréal ou à Trois-Rivières.

On peut en dire autant pour ce qui concerne les produits qui sont expédiés de cette région de bonne heure le matin pour qu'ils puissent parvenir en temps sur les marchés des villes et être vendus le même jour.

Le service actuel ne peut servir le public pour ce qui est du transport des voyageurs et des produits périssables de Victoriaville et des stations intermédiaires, à destination soit de Montréal ou de Trois-Rivières.

La compagnie du chemin de fer a complètement ignoré les besoins des régions populeuses traversées par sa ligne, non seulement de Victoriaville à Trois-Rivières, mais aussi de Victoriaville à Montréal, se privant ainsi de la plus grande partie du trafic des voyageurs et des messageries.

Si cette requête était accordée, la cité de Victoriaville, avec une population de 11,000 habitants, se verrait privée de son marché naturel—Trois-Rivières, et le commerce de cette populeuse région perdrait une artère nécessaire.

Les représentations faites par Son Excellence l'Evêque de Nicolet, par les Chambres de Commerce de Trois-Rivières et de Victoriaville, et les résolutions adoptées par chacune des municipalités intéressées, établissent clairement que si cette requête était accordée, les conditions économiques, sociales et religieuses d'une région considérable seraient de fait désorganisées, du moins durant l'hiver et une partie de la saison du printemps.

Le rapport de notre directeur du Service de l'Exploitation, préparé à la suite d'une enquête minutieuse faite par lui-même et les membres de son personnel, relativement au projet d'abandonner l'exploitation de cette ligne, dit ce qui suit:

> "Nous avons considéré l'affaire sérieusement à la suite des représentations faites par les délégations et ayant pris en considération les besoins de la région, nous recommanderions de ne pas discontinuer l'exploitation de la ligne St-Grégoire-Victoriaville."

La compagnie du chemin de fer semble prendre pour acquit qu'il suffit de démontrer des déficits d'exploitation pour être autorisée à abandonner l'exploitation d'une ligne de chemin de fer. Elle oublie que les chemins de fer sont une utilité publique, qu'ils ont été subventionnés par le public pour procurer un service convenable afin de faciliter l'échange des produits, favoriser le développement et la prospérité du pays.

Ces subsides n'ont pas été octroyés pour permettre au chemin de fer de payer des dividendes à ses actionnaires mais pour exploiter sa ligne, même à perte si c'est nécessaire.

Dans ce cas-ci, il est bien évident que la compagnie du chemin de fer, quel que soit le trafic qu'elle pouvait se procurer, n'aurait pu le transporter à cause de l'horaire de ses trains attendu que son service de trains n'accommode pas les voyageurs ni ne s'adapte au transport de quantité de marchandises.

C'est un fait connu que cette partie de réseau de chemin de fer a été un puissant facteur du développement de cette partie de la région, mais, à cette époque, elle était exploitée d'une manière à encourager son développement, à la pourvoir d'un service convenable pour le transport des voyageurs et des marchandises entre Victoriaville et Trois-Rivières. Cette ligne servait aussi de point de raccordement entre les deux chemins de fer, l'ancien Grand-Tronc et l'Intercolonial. Elle permettait aux personnes situées près des stations intermédiaires entre Doucet's Landing et Victoriaville de voyager sur les lignes principales pour se rendre à Montréal ou Québec.

L'expérience du passé a démontré que si cette partie de réseau de chemin de fer était exploitée comme autrefois elle serait un actif pour le chemin de fer et la région.

Même si la compagnie était incapable d'améliorer sa situation, tenant compte des 17 ou 20 employés qui perdraient leurs salaires se chiffrant à $20,000 ou $24,000—(Voir p. 884 de la preuve, déclarations de M. Rand)—qui deviendraient à la charge du public, peut-être pour autant, il est évident que l'intérêt public exige le maintien de cette voie ferrée.

La compagnie des chemins de fer Nationaux du Canada est sujette aux droits et obligations du Grand-Tronc, à savoir: "et, à partir de cette date, de la maintenir (voie ferrée) en bonne condition, et de l'exploiter en tout temps et en toutes saisons" tel que stipulé au contrat auquel il a été référé plus haut.

L'article 35 de la loi des chemins de fer dit:

> "...la Commission doit entendre tout ce qui concerne la prétendue violation ou infraction, et rendre l'ordonnance qui lui paraît raisonnable et opportune; et dans ladite ordonnance elle peut, à sa discrétion, ordonner à la compagnie ou à cette corporation ou personne, de faire des choses nécessaires à l'exécution convenable de ce contrat ou de s'abstenir de faire les choses qui en constituent une violation ou une infraction."

. . . . . .

La Commission a le pouvoir discrétionnaire de faire respecter les contrats, mais non d'en sanctionner la violation par une ordonnance.

L'article 165-A de la Loi des chemins de fer se lit comme suit:

> "La compagnie peut abandonner l'exploitation de toute ligne de chemin de fer, avec l'approbation de la Commission, et nulle compagnie ne doit abandonner l'exploitation de quelque ligne de chemin de fer sans cette approbation."

Elle doit prendre connaissance du contrat: l'article 35 de la Loi des chemins de fer stipule: "...la Commission doit entendre tout ce qui concerne la prétendue violation ou infraction relativement aux... contrats." Elle n'a pas d'autre autorité que celle de "rendre une telle ordonnance qui lui paraît raisonnable et opportune, et dans ladite ordonnance elle peut, à sa discrétion, ordonner

à la compagnie . . . de faire les choses nécessaires à l'exécution convenable de ce contrat ou de s'abstenir de faire les choses qui en constituent une violation ou une infraction," ou refuser la requête.

La compagnie par sa requête demande à la Commission de permettre la violation d'un contrat, mais la Commission n'a pas juridiction pour ce faire; même si elle l'avait, un tel acte ne serait ni raisonnable, ni opportun.

J'ai traité de cette question plus au long dans mon jugement au sujet de la requête du C.P.R. demandant d'être autorisé à discontinuer l'exploitation d'une partie du réseau de chemin de fer Orford Mountain, en date du 23 octobre 1935, (dossier 39309).

. . . . . .

Ici comme ailleurs la concurrence des véhicules-moteurs a sa responsabilité du déficit du chemin de fer. J'ai aussi étudié cette question dans le jugement auquel je viens de référer.

Je renverrais la requête.

Le 25 octobre 1935.

Les Commissaires Norris et Stone:

Bien que n'étant pas d'accord avec certaines raisons contenues dans le jugement du Commissaire en chef suppléant et sur lesquelles il base sa décision en cette cause, je suis d'avis avec lui que la requête devrait être refusée.

ORDER No. 52443

In the matter of the application of the Canadian National Railways, hereinafter called the "applicants," under section 165A of the Railway Act, for approval of the abandonment of operation of a portion of their Aston Subdivision, in the province of Quebec, between Victoriaville (Mile 0·0) and St. Grégoire (Mile 30·4), a distance of 30·4 miles.

File No. 39310

Wednesday, the 6th day of November, A.D. 1935.

Hon. Hugh Guthrie, K.C. *Chief Commissioner.*
F. N. Garceau, K.C., *Deputy Chief Commissioner.*
Hon. T. C. Norris, *Commissioner.*
G. A. Stone, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Victoriaville, Quebec, May 16, 1935, in the presence of counsel for and representatives of the applicants, the city of Trois Rivières, the Chamber of Commerce of Trois Rivières, the town of Victoriaville, the Board of Trade of Victoriaville, the town of Nicolet, and the town of Drummondville, and what was alleged; and upon the report and recommendation of the Chief Operating Officer,—

It is ordered: That the application be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

Application of Guy Tombs, Limited, Montreal, Quebec, on behalf of Building Products, Limited, for Ruling by the Board as to the Legal Rate applicable on Ground, or Pulverized, Limestone, from Beachville, Ontario, to Hamilton, Ontario, during the period from June 25, 1930, to June 17, 1932.

File 26786.14

RULING

By the Board:

This matter was placed before the Board for decision by written submissions of the applicant and the Canadian National Railways, over whose line the traffic moved. What is here involved is a question of tariff interpretation. All freight rates stated herein are in cents per 100 pounds, unless otherwise specifically indicated.

From the inception of the period covered by the application up to the present time, from Beachville to Hamilton (for Canadian National Railways delivery in Hamilton) there has been the following tariff provision:—

Commodity description	Rate in cents per 100 lbs.	Effective date
Limestone, for fluxing or manufacturing purposes, carloads..	4¼	From June 25, 1930, to July 14, 1931
Limestone, for fluxing or manufacturing purposes, carloads..	3¼	From July 15, 1931, to June 16, 1932
Limestone, for fluxing or manufacturing purposes, in bulk in open top cars, carloads..	3¼	From June 17, 1932, to Nov. 20, 1932
Limestone (not pulverized) for fluxing or manufacturing purposes, in bulk in open top cars, carloads..	3¼	From Nov. 21, 1932, to Sept. 28, 1933
Limestone (not pulverized) for fluxing or manufacturing purposes, in bulk in open top cars, carloads..	3	From Sept. 29, 1933, to Date

Contemporaneously and since April 27, 1931, in the same tariff, under a scale of mileage rates, a rate of 7½ cents was published on stone dust, carloads between the points here in issue.

Effective August 18, 1934, and still in force, the railway published, from Beachville to Hamilton, a rate of 5½ cents on limestone, pulverized, for manufacturing purposes, carloads, in box cars.

Applicant submitted the following statement of facts:—

"*Movement:*

From June 25, 1930, to December 5, 1931, 38 cars were shipped. On December 28, 1931, 1 car was shipped. From January 30, 1932, to June 17, 1932, 14 cars were shipped. The total movement for these periods was 53 cars.

Rates Assessed:

For the movement June 25, 1930, to December 5, 1931, rate of 7½ cents per 100 pounds was assessed and paid, such rate being the stone dust mileage rate (53 miles) as published in Canadian National Railways tariff C.R.C. E-1680 (CD 100), Item 1490.

For the movement on December 28, 1931, rate of 7½ cents per 100 pounds was assessed but was reduced to 3¼ cents per 100 pounds by claim refund on February 18, 1932.

For the movements between January 30, 1932, and June 17, 1932, charges were settled upon the basis of rate of 3¼ cents per 100 pounds. Three of the cars included in this movement were billed at rate of 3¼ cents per 100 pounds and the balance were billed at rate of 7½ cents per 100 pounds, but the charges were settled upon rate of 3¼ cents per 100 pounds.

Description of Commodity:

Commodity actually consists of pulverized limestone, shipped in bags, loaded in box cars. The description used in shipping has been "Stone Dust (Ground Limestone)."

Use to Which Put:

Used as filler for asphalt in the manufacture of prepared roofing. Commodity must be kept dry and therefore required box car movement."

This application arises through the refusal of the railway to accord to this commodity, for the period of movement June 25, 1930, to December 5, 1931, rates of 4¼ and 3¼ cents which were contemporaneously effective on limestone for manufacturing and also to establish the legality of the assessment of rate of 3¼ cents that has been applied to certain subsequent movements.

Applicant states that, prior to August 18, 1934, when the present rate of 5½ cents was established, the mileage rate applicable on stone dust was applied on shipments of this commodity, except for the 14 cars moved between January 30 and June 17, 1932. Applicant points out that, during the time the rate of 7½ cents was applied, lower rates of 4¼ and 3¼ cents were effective and applicable on "limestone, for fluxing or manufacturing purposes;" that the coarsely crushed limestone shipped to the Steel Company at Hamilton is the same material from a chemical standpoint as the pulverized limestone shipped to Building Products, Limited. Applicant's contention, therefore, is that the tariff description "limestone, for fluxing or manufacturing purposes," without any qualification such as now provided for, covers the commodity here in question, consequently, the lower rates under this tariff description are properly applicable thereto and applied equally to the movement in open top and box cars prior to the restriction to movements in bulk in open top cars effective June 17, 1932. If applicant's interpretation of the tariff is a proper one, obviously the rate applied equally to movements in open top and box cars prior to June 17, 1932. Applicant referred to the Board's Circular regarding the construction and filing of freight tariffs, which says that "commodity descriptions must be explicit so as to leave no room for supposition or analogy" and contends the tariff description already quoted clearly applies to limestone in any shape or form.

The position taken by the railway may be summarized as follows. The rate of 3¼ cents assessed on the shipment made on December 28, 1931, and those between January 30 and June 17, 1932, was the result of a misunderstanding and error by officers of the railway's accounting department; that the description used by the shipper in tendering these shipments to the railway for carriage, namely, "stone dust (ground limestone)," is the correct description of the material shipped; that "stone dust" may consist of ground limestone or of any other stone ground to a powder and the rate published on that distinctive commodity is 7½ cents. Between the points here in question, however, to meet truck competition, this normal rate was reduced to 5½ cents, effective August 18, 1934, by a new item in the tariff with the description "limestone, pulverized, for manufacturing purposes, in box cars." The railway states that the description "limestone, for fluxing or manufacturing purposes," in connection with the lower rates, does not fit the commodity here under consideration, which is distinctly and separately provided for under the description "stone dust;" that "limestone" is what its name and tariff description implies, namely, lime-*stone*, an article in the form of a rock or stone recognized as having a commercial identity and category of its own, whereas the more limited and specific description "stone dust" is applicable to the commodity under its special characteristic of being ground or pulverized.

In the Board's Judgment in the Eastern Rates Case, 1916, Volume 6, Board's Judgments and Orders, page 133, the distinction between limestone for fluxing

and manufacturing purposes and stone dust seems to have been clearly recognized by the Board. At page 174, stone dust is referred to and an increase in rates, as therein set out, authorized, while, at page 227, reference is made to the rates on " stone, for fluxing and other manufacturing processes," which were not to be increased.

There was submitted to the Board in 1916 and 1917, the matter of rates charged on agricultural limestone and stone dust, Beachville and Kirkfield being the two producing points there involved. The complaining shippers in that case referred specifically to the lower rates then in force on limestone for fluxing or manufacturing purposes than applicable on agricultural limestone and stone dust. This reference was not from the standpoint of contending that the limestone rates applied on the ground limestone, but a comparison made between the rate differences in urging for a reduction in the rates on agricultural limestone and stone dust. By judgment dated June 18, 1918, Volume 8, Board's Judgments and Orders, page 199, the Board found that it had not been established that the rates then existing on agricultural limestone and stone dust were unreasonable. In that judgment it was pointed out that agricultural limestone was used as a filler in the manufacturing of fertilizer; that limestone dust was used as a filler in paving. In the present application, the latter is referred to as also being used as a filler for asphalt in the manufacture of prepared roofing.

The rates on agricultural limestone, or stone dust, were next under review by the Board in 1919 as a result of increased rates thereon proposed by the railways. The Board held hearings in the matter and, by judgment dated October 1, 1919, Volume 9, Board's Judgments and Orders, page 269, found that the further increases proposed had not been justified. In this case, also, the record shows that the shippers made certain comparisons with the lower rates published on limestone for fluxing or manufacturing purposes.

Shortly afterwards these rates were again before the Board as a result of an application of the Canada Cement Company in connection with the rates from Belleville, Montreal and Port Colborne. The situation then existing was that there was not a uniform basis of rates from the various shipping points. By judgment of May 10, 1922, Volume 12, Board's Judgments and Orders, page 38, the Board decided that a common basis of rates should be provided east of Port Arthur, Fort William and Armstrong, Ontario, so that the commodity might move out of the points of origin on a common rate basis. It was therein stated that agricultural limestone and stone dust are interchangeable terms. The judgment was implemented by General Order No. 364 of May 23, 1922, Volume 12, Board's Judgments and Orders, page 52, directing that all railways subject to the jurisdiction of the Board file tariffs, to become effective not later than June 15, 1922, in accordance with the mileage scale as therein set out, to apply on agricultural limestone, or stone dust, east of Port Arthur, Fort William and Armstrong. This order fixed a rate of 7½ cents for the Beachville-Hamilton distance of 53 miles, which is still in force. This order was subsequently amended by General Order No. 414, dated March 30, 1925, Volume 15, Board's Judgments and Orders, page 28, but this only modified the rates for distances over 125 miles, making no change in the scale for distances under 125 miles. There is no room for doubt as to what commodity the Board was dealing with in these cases and when prescribing for the transportation thereof the rates set out in the orders above-mentioned. It was limestone, or any other kind of stone, in ground or powdered form. The Board was fully cognizant of the lower rates then in force under the tariff description reading " limestone, for fluxing or manufacturing purposes."

In 1922, complaint was made to the Board concerning the rates on limestone from Beachville to Niagara Falls and, by judgment dated July 19, 1922, Volume 12, Board's Judgments and Orders, page 92, and Order No. 32637, dated July 24,

1922, Volume 12, Board's Judgments and Orders, page 109, the railway was required to publish a rate of 90 cents per ton on limestone from Beachville to Niagara Falls. The rate that the Board had directed to be established between the same points on stone dust, or agricultural limestone, effective June 15, 1922, or, approximately, just one month before issuance of its judgment of July 19, 1922, concerning the stone rate, was 9½ cents. The record in this last-mentioned case shows clearly that the material in question consisted of "stone." The Beachville shipper was meeting competition with "Michigan Stone." "Walkerton Stone" was also referred to and, throughout the case, "stone" only was being dealt with and not rates on stone dust or agricultural limestone, which had, only a short time previously, been under review and a revision of the rates thereon directed.

This Board, as well as the Interstate Commerce Commission, has stated:—

> "Although doubt as to the meaning of a tariff must be resolved in favour of the shipper and against the carrier which compiled it, the doubt must be a reasonable one and the terms of a tariff must be taken in the sense in which they are generally understood and accepted commercially. All of the pertinent provisions of a tariff must be considered together, and, if those provisions may be said to express the intention of the framers under a fair and reasonable construction, that intention must be given effect." 118 I.C.C., 186; 161 I.C.C., 77. Volume 23, Board's Judgments and Orders, p. 53 and p. 191; Volume 25, Board's Judgments and Orders, p. 103.

For the past twenty years, at least, the tariffs of the railway company published rates under the following descriptions:—

(1) "Limestone" and "Limestone, for fluxing or manufacturing purposes;"

(2) "Stone Dust" and "Agricultural Limestone."

The rates under the first description have always been lower than those published under the second description, but, during all this period, so far as we are advised, it has never, at any time, been previously contended by any shipper that the first-mentioned tariff description should be applied to the material moving under the second description, which specifically defines the material intended to be covered thereby and which description has had a well accepted meaning recognized, not only by shippers, but also by the Board, as made clear from what is set out above.

The Board has stated that neither carriers nor shippers can be permitted to urge, for their own purposes, a strained and unnatural construction of tariffs. Where such a construction is at variance with the plain purpose of the tariff and would produce results clearly repugnant to justice, it is our duty to reject it. Applicant has furnished values as follows:—

Limestone, not pulverized, for fluxing or manufacturing purposes, 75 cents per ton;

Pulverized Limestone, for manufacturing purposes, in bags, $2.95 per ton;

Agricultural Limestone, Ground, in bags, $2.90 to $3.65 per ton.

The tariff construction, as sought by applicant, would provide for the same rate on an article valued at $2.95 per ton as published on an article valued at 75 cents per ton and very much lower than specifically published on an article of approximately the same value as pulverized limestone for manufacturing purposes, namely, agricultural limestone, ground. The tariff construction sought would, therefore, be both unreasonable in itself and productive of demonstrably inequitable results, as well as being in conflict with the rates which the Board directed for application on the commodity in question.

It has also been held that, as between a general tariff provision and a specific tariff provision, the latter constitutes an exception to the general provision,

Volume 21, Board's Judgments and Orders, page 192. The specific tariff provision for stone dust and agricultural limestone may clearly be considered properly applicable here.

For the reasons above set out, the Board declares that the legal rate applicable, during the period June 25, 1930, to June 17, 1932, from Beachville to Hamilton, on pulverized limestone, described by shipper as "stone dust (ground limestone)," was 7½ cents.

OTTAWA, ONT., November 1, 1935.

ORDER No. 52447

In the matter of the application of Guy Tombs, Limited, of Montreal, Quebec, on behalf of Building Products, Limited, for a ruling by the Board as to the legal rate applicable on ground, or pulverized, limestone from Beachville, Ontario, to Hamilton, Ontario, during the period from June 25, 1930, to June 17, 1932.

File No. 26786.14

SATURDAY, the 9th day of November, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon reading the submissions filed on behalf of the Canadian National Railways and in support of the application,—

The Board declares: That the legal rate applicable, during the period June 25, 1930, to June 17, 1932, from Beachville to Hamilton, Ontario, on pulverized limestone, described by the shipper as "stone dust (ground limestone)," was 7½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

Application of the Canadian Pacific Railway Company (Lessee of the New Brunswick Southern Railway Company) for an Order granting leave to abandon the operation of that portion of the New Brunswick Southern Railway, known as the Shore Line Subd. of the C.P.R., between Shore Line Junction (Mile 1) and Bonny River (Mile 29·8), a distance of 28·8 miles.

JUDGMENT File 39309.3

STONE, COMMISSIONER:

The line involved in this application extends from Shore Line Junction to Bonny River 28·8 miles, and is the West end segment of a branch line operated by the Canadian Pacific Railway along the shore route between St. Stephen and West Saint John, New Brunswick.

A brief filed by the counsel for the province of New Brunswick showed that the Grand Southern Railway Company was the first owner and operator of the railway incorporated by Act of Assembly, 1872, c. 27, and that they were under a statutory obligation to provide a regular service. It was then taken over by the Shore Line Railway Company incorporated by Letters Patent confirmed by Act of Assembly, 1889, c. 26, by deed bearing date the 15th day of March, A.D. 1903. The line was transferred under a bond foreclosure to Honourable Russell Sage, who in turn, under a contract bearing date the 28th day of March,

1903, and by deed bearing the same date, transferred the line to the New Brunswick Railway Company incorporated by Act of Assembly, 1901, c. 74; and finally by lease bearing date the 28th day of September, 1910, the Canadian Pacific Railway Company acquired its interests for a term of 999 years.

Application was made by the Canadian Pacific Railway Company, as lessee and exercising the franchise of the New Brunswick Southern Railway Company under section 165 (*a*) of the Railway Act and section 2, subsection 3, of the Canadian National-Canadian Pacific Act, 1933, and all other appropriate statutory provisions, for an Order granting it leave to abandon operation.

In support of this application the applicant submitted a statement setting forth the general description of the line, its special industrial relationships, its revenue and expenses for the calendar years 1931 and 1933, an analysis of its freight traffic for the same years, and a map of the territory through which it runs. Later, at the request of the Board, a statement of receipts and expenditures for the year 1934 was received.

The financial statements submitted, summarized, are as follows:—

Revenues accruing to—	Branch line	Balance of system	Total
1931	$ 1,554	$5,862	$ 7,416
1933	714	1,474	2,188
1934	1,490	8,318	9,808

Expenses incurred on—	Branch line	Balance of system	Total
1931	$37,173	$2,638	$39,811
1933	35,234	663	35,897
1934	33,399	3,743	37,142
System loss from operation—			
1931	.....	....	$32,395
1933	.....	....	33,709
1934	.....	....	27,334

An average for the three years of $31,146.

Car movements on branch line—	In	Out	Total
1931	12	149	161
1933	4	37	41
1934	22	108	130

In 1931 mixed train service was operated daily, except Sunday, and reduced in 1932 to tri-weekly service, which is still in effect.

The application was referred to the Engineering and Operating Departments for inspection and report, after which the case was listed for hearing at St. Stephen on Monday the 29th day of April, 1935, when counsel appeared for the applicant, the province of New Brunswick, the town of St. Stephen, various businesses and interested parishes, and Mr. Rand Matheson for the Maritime Board of Trade, besides other parties interested.

Counsel for the applicant stated their case is based very largely on statements filed with the Board which showed the operating losses to be over $31,000 a year for the three years in which statements were submitted, and examined a number of witnesses connected with railway operation who were afterwards cross-examined by counsel for the province of New Brunswick and the town of St. Stephen, which developed information to show that there were no houses and no industries on the line with the exception of a portable mill at Dyers and a temporary road construction plant at Oak Bay, and that the line from Watt Junction to St. Andrews intercepts the centre of the line proposed to be abandoned at Brunswick Junction. That the distance from Brunswick Junction to Bonny River was 15 miles, and from Brunswick Junction to Shore Line Junction 13·8 miles. From St. Andrews and St. Stephen via Watt Junction to McAdam Junction, there is a return daily service, and that if the line were abandoned the nearest rail connection from Dyers would be 6·2 miles, McMinn 4 miles, Gidden 2 miles, Ripley's 3 miles, and Oak Bay 5 miles; service between Bonny River and West Saint John to be continued as at present. That the controlling or

governing grade on the line to be abandoned was 1·98 per cent, St. Stephen to McAdam $\frac{6}{10}$ per cent, and from McAdam to Saint John a maximum of 1 per cent.

The estimated salvage value for the 28·8 miles of track was estimated at $80,800, the cost of recovery $14,400, making the net salvage value $66,400, and that the right of way would be sold or disposed of if it were possible.

Of the 12 inbound cars recorded in 1931, 9 were consigned to Gidden, consisting of 5 cars of flour, 3 of horses, and 1 fertilizer. The flour was consigned to Mr. John Gidden, who has a store one mile from Gidden station on the Shore Line, also situated about one and a half miles from Hewitt on the St. Andrews branch line; and out of the 4 cars inbound in 1933, 3 cars were flour and feed and were consigned also to Mr. Gidden.

The inbound movements recorded for 1934 showed 22 cars, 3 of feed and flour for Gidden, 16 cars for Oak Bay, consisting of 7 cars of asphalt, 6 cars of contractors' equipment, 1 empty tank, 1 truck, 1 fuel oil. The other 3 cars were fertilizer, 1 consigned to McMinn and the other 2 to Gidden. The cars listed for Oak Bay were consigned to the Raynor Construction Company, the firm having the paving contract for the Provincial Government, which would soon be terminated.

The portable sawmill that was operated at Dyers did not operate last year. This mill is owned by Mr. Stillman Armstrong and it was stated that Mr. Armstrong intended this year to operate a mill one mile east of Bonny River, so that the output would be taken care of by the remaining section of the line.

Two daily bus services advertised by the Fundy Bus Company making return trips between Saint John and St. Stephen were operated each day over the Provincial highway running from St. Stephen to Saint John south of the Shore Line Railway. In the area of Bonny River there were secondary highways leading to the principal highway. That Oak Bay is on the trunk road 4·7 miles from Shore Line Junction. That there is a secondary road from Dyers northwest to Hewitt station on the St. Andrews branch of the Canadian Pacific Railway; also a secondary road southeast to the main highway between St. Stephen and Saint John. That 168 trucks were licensed by the Provincial Government in 1934 alleged to be operating in St. Stephen, St. Andrews and vicinity, 58 of which were used for general trucking purposes, the balance of 110 being privately owned—Exhibit No. 5.

Mr. Knowles Elliott, District Freight Agent, New Brunswick District of the Canadian Pacific Railway, examined by Mr. Walker in connection with motor truck operation, gave the following evidence:—

> "Q. Have you made any investigation of the extent to which pulpwood moved by truck, even during the past two or three years when railway facilities were available?—A. Yes.
>
> "Q. With what result, as far as Oak Bay and Dyers are concerned? —A. During 1931, 400 cords of pulpwood were trucked from Oak Bay to Woodland, Maine. During 1933, 423 cords from Oak Bay and 85 from Dyers.
>
> "Q. And I think you also have some figures for the first six months of 1934?—A. From Oak Bay 534 cords, from Dyers 56 cords.
>
> "Q. Converted into carloads at the rate of 16 cords to the car that gives you from Oak Bay 25 cars in 1931, 26 in 1933, and 33 in the first six months of 1934.
>
> From Dyers 5 cars in 1933, and 3 in the first six months of 1934." (Page 368, Vol. 620.)
>
> "Q. What has been the situation within the past two or three years with regard to truck competition generally, and what, if any, action have you taken to meet it in the way of reduced freight rates?—A. The prin-

cipal commodity being pulpwood, and the principal destination Woodland, Maine, we endeavoured by rate adjustments to capture some of that traffic. On January 18, 1933, we reduced our rates from towns on this particular section, and again we made another reduction on June 18, 1934.

"Q. That was for the sole purpose of meeting truck competition was it?—A. Yes.

"Q. Did this reduction result in any increase of traffic?—A. Very little." (Page 371, Vol. 620.)

Counsel for the applicant stated that—

"The basis of this application is the losses in operation due to truck competition, I do not mean necessarily in the sense of public carrier trucks, but the handling of traffic by the use of trucks." (Page 333, Vol. 620)—

also that no portion of the rental payable by the Canadian Pacific Railway to the New Brunswick Southern in respect to the entire Shore Line Subdivision ($15,000) is included in the yearly statement of expenses incurred; further, the Canadian Pacific own the entire capital stock of the New Brunswick Company and have acquired all the bonds.

A brief and a supplementary brief outlining the stand that the Province of New Brunswick takes in regard to the closing of this line of railway was filed by counsel for the Provincial Government, supplemented at the hearing by further statements in opposition to the Railway's application, wherein it was contended that the applicant was under a legal obligation to continue the operation of the old line between Saint John and St. Stephen, and quoted extracts under its lease from the New Brunswick Southern Railway Company.

That the Crown had a lien for the sum of $374,000 paid to the original company by way of subsidy under the authority of Acts of Assembly, 1884, c. 3, and in the event of this railway being abandoned the Crown could support a claim for the subsidy paid. That if the applicant abandons a portion of this branch it will be violating this contractual obligation in favour of the New Brunswick Southern Railway Company. That abandonment of a portion of the line would preclude the possibility of another company furnishing a railway service over the routes in question, and suggested that there is no authority under the statutory provisions referred to in the application to permit the abandonment of a portion only of a line. That the community served contributed to the cost of construction relying undoubtedly to a large extent upon the obligation of the Railway to provide a daily service, as defined in Acts of Assembly, 1872, c. 27, 1884, c. 85, s. 6, and 1882, c. 41, s. 6.

That in addition to the stations enumerated in the application, St. Stephen, St. George, Black's Harbour, Beaver Harbour, and the entire shore line in that district would be affected.

The freight was routed over the longer haul from St. Stephen via McAdam to Saint John, or vice versa. That the town of St. George would be cut off from St. Stephen depriving its inhabitants of access to the Chipman Memorial Hospital located at St. Stephen, and would seriously affect the canning industry at Black's Harbour, which carried on an international trade.

That the Motor Carrier Board of the province had announced a policy of not granting freight franchises where adequate service is being rendered by a railway, and that in 1932 that Board refused such an application.

That rates between St. Stephen and Saint John are based on the short haul of 83 miles by the Shore Line route, and to obtain that basis the province had sunk three hundred and forty-seven thousand dollars ($347,000) in this railway. (Page 387, Vol. 620.)

Counsel for the town of St. Stephen subscribed to the briefs and arguments submitted by counsel for the province, and contended that since 1910 the Shore Line Railway's natural business had been routed by McAdam Junction.

The town of St. George contended that shipments of pulp were routed from the town of St. George via Saint John and McAdam Junction to the American market, an extra haul of 93 miles instead of the shorter haul by St. Stephen. Exhibit No. 10.

Various other submissions were made by the interested protestants, but the above covers the principal arguments advanced by those opposed to the application.

Regarding the legal aspect raised in opposition to the application, no principle is defined by the Railway Act upon which the Board should be governed in dealing with approvals or refusals of applications for abandonment of lines, and I can only reaffirm what was stated in the Elgin and Havelock Subdivision, C.N.R., case (25 Board's Judgments, Orders, Regulations and Rulings, p. 223 to 229), that it was not the function of the Board to pass upon the constitutionality or validity of legislation whether Dominion or provincial. The question whether abandonment of operation shall be allowed must be determined by the circumstances in each case.

An analysis of the pounds of freight shipped from St. Stephen over the Shore Line to all stations Bonny River to Spruce Lake, inclusive, shows that the movements were exceptionally light, and decreased in 1933 from 1931. Exhibit No. 6.

Statements submitted by the railways in connection with the operation of the line involved in this application showed that traffic is small involving heavy losses from operation. Freight traffic for the first seven months of 1935, January to July, inclusive, originating at stations Saint John to Bonny River, destined to St. Andrews and to points between St. Andrews and McAdam, but not including McAdam, amounted to 1,063 tons. Of the total carload traffic, which amounted to 786 tons, of this amount 86·4 per cent, or 679 tons, originated at Saint John and Fairville, and was destined for St. Andrews; while the balance, consisting almost entirely of fertilizer, was forwarded from Saint John to Chamcook, Roix Road, and Hewitt stations on the McAdam-St. Andrews line. During the same period the total L.C.L. merchandise traffic amounted to 277 tons. Of this traffic 144 tons, or 52 per cent, was forwarded from Saint John to St. Andrews; 69 tons were destined for Lawrence and Barber stations, also on the St. Andrews line, which shows that very little traffic during the above-mentioned period was destined to stations on the line to which the application applies.

Messrs. Webber and Tupper in their letter filed as Exhibit No. 15, made it quite clear that in recent years they had moved by motor truck from points on the St. Stephen-McAdam line freight formerly handled by the railway, and explained that the difference in the costs for transportation takes care of the cost for trucking. Evidence shows that similar conditions prevail between Dyers, Oak Bay and Woodland.

Every economy appears to have been practised by the railway to reduce expenses, as will be noted by answers given by the General Superintendent under examination by counsel for the applicant.

> "Q. Is there any other economy that you could practise consistent with safe operation?—A. No. The Shore Line is maintained at an economical level of maintenance to take care of the traffic that we find available. There are no other economies that are available.
>
> "Q. In your opinion would any change in the standard of maintenance affect the volume of passenger travel?—A. Not at all.
>
> "Q. Is there any passenger travel on this subdivision?—A. We find that passenger traffic appears to have deserted us on the Shore Line. We

maintain that service primarily for freight, with accommodation for such passenger traffic as offers at intermediate stations or from one end to the other." (Page 347, Vol. 620.)

Economic operating conditions require freight from St. Stephen and vicinity destined for Saint John and points beyond to be routed by McAdam Junction, as the following statement shows:—

"Q. Is it as cheap to haul the traffic a longer distance as a shorter? —A. In this case, yes.

"Q. You say you also route some which originates on the Shore Line, into St. Stephen, that is, traffic which the Shore Line would naturally have is shifted from the Shore Line to the McAdam Line?—A. We do that at times to give faster service. Whichever is the quicker route we use it.

"Q. And that would add to your cost?—A. No, we think not.

"Q. Do you think you can haul freight from Bonny River to Saint John via St. Stephen as cheap as from Bonny River to Saint John?—A. I know we can." (Pages 353-354, Vol. 620.)

The competitive methods of transportation between Saint John and the territory adjacent to the Shore Line Railway whether by motor buses, motor trucks or by water route, develop a situation which must have a strong bearing on the rates structure of the railway.

Considering all that is involved, the apparent necessities for continued operation in the public interest are small, and hardship due to abandonment will, therefore, be negligible.

I would grant the application without prejudice to whatever rights or remedies may be open to the parties in the courts.

November 5, 1935.

The Assistant Chief Commissioner and Commissioner Norris concurred.

ORDER No. 52453

In the matter of the application of the Canadian Pacific Railway Company, as lessee exercising the franchises of the New Brunswick Southern Railway Company, hereinafter called the "applicant company," under section 165A of the Railway Act, for approval of the abandonment of operation of that portion of the New Brunswick Southern Railway known as the Shore Line Subdivision of the applicant company, between Shore Line Junction (Mile 1) and Bonny River (Mile 29·8), a distance of 28·8 miles.

File No. 39309.3

FRIDAY, the 8th day of November, A.D. 1935.

Hon. HUGH GUTHRIE, K.C. *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at St. Stephen, April 29, 1935, in the presence of counsel for and representatives of the applicant company, the province of New Brunswick, the town of St. Stephen and parishes interested, the Maritime Board of Trade, and other parties

affected—and upon the report and recommendation of the Chief Operating Officer and the Chief Engineer of the Board,—

It is ordered: That the abandonment of operation of that portion of the New Brunswick Southern Railway known as the Shore Line Subdivision of the applicant company, between Shore Line Junction (Mile 1) and Bonny River (Mile 29·8), in the province of New Brunswick, a distance of 28·8 miles, be, and it is hereby, approved.

H. GUTHRIE,
Chief Commissioner.

Application of the Canadian Pacific Railway Company under Section 165 (A) of The Railway Act, for approval of the abandonment of operation of that portion of its Stobie Branch between Mileage 1·6 and the Blezard Mine, at Mileage 5·02, a distance of 3·42 miles.

File 39309.4

Heard at Ottawa, Ontario, November 5, 1935.

JUDGMENT

COMMISSIONER STONEMAN:

On June 27 the Canadian Pacific Railway Company filed its application with the Board for an order granting it leave to abandon the portion of its line between Mileage 0·0 and the Blezard Mine, a distance of 5·02 miles.

On June 29 the railway company substituted a new application, in amended form, to cover the portion of the line between Mileage 1·6 to 5·02.

The Stobie Branch Line was constructed in 1886, under the Railway Company's branch line powers—the plan of which was approved by the Department of Railways and Canals, December 11, 1886. The portion of the Branch from mileage 3·0 to 5·02 has not been in use for approximately thirty years. The road bed and right of way are covered with growth and the ties are completely rotted out.

On July 8 copy of the railway company's application was served on the clerk of the township of McKim, and on the clerk of the township of Blezard. On July 30 the consent of the township of Blezard was filed with the Board, which also stated that the following parties might be interested: Mr. G. W. Coffin, owner of lot No. 5 and part of lot No. 6, concession 2, township of Blezard, comprising 360 acres of mining land; Mr. Thomas Edison, owner of lots 6-7-8, concession 2, township of Blezard, comprising 840 acres; Sir Mortimer Davis, owner of lots Nos. 1 and 2, concessions 3 and 2, township of Blezard, comprising 942 acres. On August 2 the Board notified the applicant company that copies of its application should be sent the above-named property owners. The railway company notified the property owners by letter dated August 7, 1935.

The only property owner to reply to the railway company's application was Mr. G. W. Coffin, owner of lot No. 5 and part of lot No. 6, concession 2, township of Blezard, by letter dated August 12, 1935, in which he took exception to the Board granting the railway company's application, on the ground that it would handicap him in the selling or operation of the mine. The railway company, in reply to Mr. Coffin's objections, in letter of September 5, 1935, enclosing plan showing, in red, the Stobie Branch, and in yellow, lot No. 5, concession 2, township of Blezard, point out that the nearest part of this lot is at least one-quarter of a mile from the Stobie Branch and that it is several miles beyond any portion of the branch which has been used during the past thirty years; that no mining operations have been carried on in this property since Mr. T. Smith opened up two cuts and did some diamond drilling in 1915,

under an option which was not exercised. There is, the railway company points out, an old shaft which was sunk on this lot about thirty-five years ago, but no attempt to carry on mining operations has been made for a great many years. To reach this property by rail would necessitate the rebuilding of the Stobie Branch, and the construction of an additional spur to lot No. 5, which would also necessitate new bridges crossing the gullies, as those which formerly existed on the old Stobie Branch beyond Mileage 3 have rotted away and collapsed.

This matter was listed for hearing, in Ottawa, on November 5, 1935; all interested parties were notified. The applicant company's representatives were the only ones appearing.

A letter dated October 31, 1935, from the International Nickel Company of Canada, Limited, and filed as Exhibit No. 6 stated, in part, that this company offered no objection to the abandonment of the Stobie Branch from Mileage 1·6 to 5·02. No exception was taken to this application for abandonment by anyone other than Mr. G. W. Coffin, who stated his objections in writing by letter dated August 12, 1935.

The submissions advanced at the hearing by the railway company's representatives, other than Exhibit No. 6, already referred to, were a summary of those appearing on the file. No settlers are affected; the territory is practically barren.

In view of the facts before me, I recommend the application of the Canadian Pacific Railway Company be allowed and order issue granting the application.

OTTAWA, November 7, 1935.

The Chief Commissioner and the Assistant Chief Commissioner concurred.

ORDER No. 52444

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 165 (A) of the Railway Act, for approval of the abandonment of operation of that portion of its Stobie Branch between Mileage 1·6 and the Blezard Mine, at Mileage 5·02, a distance of 3·42 miles.

File No. 39309.4

THURSDAY, the 7th day of November, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Ottawa, November 5, 1935, in the presence of counsel for and representatives of the applicant company, and what was alleged—and upon the report and recommendation of the Chief Operating Officer and the Chief Engineer of the Board,—

It is ordered: That the abandonment of operation of that portion of the applicant company's Stobie Branch between Mileage 1·6 and the Blezard Mine, at Mileage 5·02, a distance of 3·42 miles, in the province of Ontario, be, and it is hereby, approved.

H. GUTHRIE,
Chief Commissioner.

Application of the Canadian Pacific Railway Company under Section 39 of the Railway Act, for an Order directing the City of Ottawa, and, as the Board may see fit, all other interested parties, including the City of Hull, and the Hull Electric Railway Company, to pay the entire cost of construction and maintenance of the works directed by the Board under Order No. 51416, dated September 18, 1934, and of the surface portion of the bridge used for vehicular and pedestrian traffic.

(File No. 33060)

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER:

This application was heard in the presence of counsel for the Canadian Pacific Railway Company, the Corporation of the City of Ottawa, the Corporation of the City of Hull, and the Hull Electric Railway Company.

The Canadian Pacific Railway Company applied to the Board for an order directing the City of Ottawa, the City of Hull, and the Hull Electric Railway Company to pay the entire cost of construction and maintenance upon the Interprovincial bridge which crosses the Ottawa river between the cities of Ottawa and Hull of the works directed by the Board under Order No. 51416, and of the surface portion of the bridge used for vehicular and pedestrian traffic.

By this order, No. 51416, dated September 18, 1934, the Canadian Pacific Railway Company was directed at its own expense to erect a three-bar railing between the sidewalk and roadway, immediately outside the outstanding uprights on both sides of the said Interprovincial bridge for the whole length of the bridge, and to provide better lighting thereon especially at each end of the bridge, and it was ordered that the above work should be completed by November 15, 1934.

The above order was made upon the report and recommendation of an Inspector of the Board concurred in by its Chief Operating Officer, and after reading the submissions filed on behalf of the Canadian Pacific Railway Company and the Hull Electric Railway Company although no submissions were made at that time on behalf of the City of Ottawa or the City of Hull.

Subsequently, the Canadian Pacific Railway Company applied for a reconsideration of Order No. 51416, above mentioned, and a further hearing took place before the Board on December 10, 1934, in the presence of counsel for the applicant company and the Hull Electric Railway Company. On January 28, 1935, an order was made refusing the application of the Canadian Pacific Railway Company, and the said railway company was directed to carry out the provisions of Order No. 51416 within sixty days from the 28th day of January, 1935.

By further orders of the Board the date for completion of the above work was extended until the 15th July, 1935.

The present application by the Canadian Pacific Railway Company asks that the whole cost of construction and maintenance of the works directed by the Board under Order No. 51416, and also of the maintenance of the surface portion of the bridge used for vehicular and pedestrian traffic, be now placed upon the City of Ottawa, the City of Hull and the Hull Electric Railway Company as the chief beneficiaries of the above work.

It is necessary to look into the history of the Interprovincial bridge structure from its inception in the year 1880 down to the present time, in order to ascertain the rights and obligations of the various parties.

By a statute of the Parliament of Canada, 43 Vict., Cap. 55, the Pontiac Pacific Junction Railway Company was incorporated to construct a line of railway from a point at or near the city of Hull to such point in the county of Pontiac as might be found suitable for crossing the Ottawa river, with power to

construct a bridge over the Ottawa river "and to make such bridge suitable for railway traffic and for the use of ordinary vehicles"; and by an Act of the Parliament of Canada, 45 Victoria, Chapter 69, the Pontiac Pacific Junction Railway Company was given power to construct a railway bridge over the Ottawa river at or near the city of Ottawa to some point between the eastern limit of the city of Hull and the village of Aylmer, and it was declared by section 4 of the last mentioned Act that the said bridge and the ascents and approaches thereto should be vested in the said railway company, their successors and assigns forever. By another Act of the Parliament of Canada, 53 Victoria, Chapter 68, it was provided that the said railway company might construct or arrange the said bridge over the Ottawa river for the use of foot passengers and carriages as well as for railway purposes, and provision was made by the said last mentioned statute for the collection of tolls for passage over the said bridge.

By an Act passed by the Parliament of Canada, 60-61 Victoria, Cap. 4, it was among other things provided that the Governor in Council may grant a subsidy for a railway and traffic bridge over the Ottawa river at Nepean Point between the city of Ottawa and the city of Hull not exceeding in the aggregate $112,500, and it was further provided in the said Act that the work on the said bridge should be commenced within two years from the 1st day of August, 1897, and be completed within four years from the said last mentioned date. By a certain agreement dated September 21, 1899, made between Her Majesty the Queen represented therein by the Minister of Railways and Canals, and the Pontiac Pacific Junction Railway Company and the Ottawa and Gatineau Railway Company, provision was made for the construction of the said bridge and for payment of the said subsidy as hereinbefore recited, and in and by the said agreement it was provided that the Pontiac Pacific Junction Railway Company and the Ottawa and Gatineau Railway Company would upon and after the completion of the said bridge and works pertaining thereto " truly and faithfully keep and maintain the same in good order and condition and open at all times for railway or general traffic." By a further agreement made on November 26, 1900, between Her Majesty the Queen represented therein by the Minister of Railways and Canals, and the Pontiac Pacific Junction Railway Company and the Ottawa and Gatineau Railway Company, it was declared and agreed in the following terms that—

> " the bridge to be constructed, completed, equipped and maintained by the companies in the aforementioned agreement, No. 13695, shall be a railway and highway traffic bridge and shall include the approaches thereto";

and also

> " the facilities to be provided by the companies upon the said bridge for vehicular and foot passenger traffic shall be in accordance with the directions of and subject to the approval of the Minister of Railways and Canals and his Successors in Office";

and in and by the said agreement the said two railway companies further agreed that,

> " the companies shall upon and after the completion of the said bridge and approaches well, truly and faithfully keep and maintain the same at all times in the most substantial order and condition, the highway portion being open and safe for foot passenger traffic and vehicular traffic of every description, and the said bridge being otherwise safe for the proper passage without delays of railway traffic of every description; the whole to be to the entire satisfaction of the Governor in Council".

And in and by the last mentioned agreement it was further provided that,

> " the general public shall at all times and for all purposes, and on foot as well as with every description of vehicle, have full and free access to the

said bridge and the free right, liberty and privilege to cross and re-cross the said bridge upon the portion thereof reserved and maintained for such traffic, without interruption, delays or impediments of any nature and to the same extent as if the said portion of such bridge and approaches thereto formed part of a public highway."

By an Order in Council passed on March 27, 1901, provision was made for the payment of the subsidy hereinbefore set out to the said railway companies, and in and by said Order in Council it was declared that the said subsidy as originally granted in 1897 had been increased by an Act passed in the year 1900, "on the condition that the bridge be so constructed as to provide suitable facilities to the satisfaction of the Minister of Railways and Canals, for free vehicular and foot passenger traffic, the same as upon a public highway."

In the year 1895 the Corporation of the city of Ottawa passed a by-law to grant a bonus of $150,000 to aid and assist the Pontiac Pacific Junction Railway Company, and the by-law of the city of Ottawa together with a certain agreement dated December 14, 1893, made between the Pontiac Pacific Junction Railway Company and the Corporation of the City of Ottawa was duly ratified by the Legislature of the province of Ontario by an Act passed, 59 Victoria, Cap. 87, and which said last mentioned agreement provided among other things as follows:—

"That all parts of the stone, steel and iron-work of said bridge shall be permanently (that is forever) maintained and kept in repair by the said railway companies and at their expense and that the planking for carriage, street railway or tramway and foot traffic be maintained and kept in repair by the said railway companies and at their expense for thirty years from January 1, 1894."

"The said company shall permit any street railway company to use the highway portion of the said bridge for street car traffic on such terms to be imposed on such street railway company as the council of the corporation of the city of Ottawa may approve by by-law, but without any liability on the said railway company to lay, maintain or repair tracks or paving for the purposes of any such street railway."

"The said company shall erect and maintain such lamps on the highway portion of said bridge as the council of the said corporation of the city of Ottawa may from time to time deem necessary, the said corporation supplying at its own expense the light therefor, as may by the said corporation be deemed expedient."

It is to be noted that in the said last mentioned agreement the provision made for the maintenance and repair of the highway for carriage, street railway, tramway and foot traffic was to be borne by the railway company for a period of thirty years from the 1st January, 1894, but there apparently was no time limit in regard to the provision made in the said agreement for the lighting of the said bridge structure, as set out in the agreement.

By an Act of the Parliament of Canada passed in the year 1901 the name of the Ottawa and Gatineau Railway Company was changed to the Ottawa, Northern and Western Railway Company, and in the year 1902 the Pontiac Pacific Junction Railway Company was absorbed by the Ottawa, Northern and Western Railway Company, and in the year 1902 the Ottawa, Northern and Western Railway Company was leased to the Canadian Pacific Railway Company for a term of 999 years. Under the above arrangement the Canadian Pacific Railway Company became possessed of all rights, franchises and authority in respect of the said bridge, and has since the last mentioned date controlled and operated the said bridge.

The agreement made between the Pontiac Pacific Junction Railway Company and the city of Ottawa on December 14, 1893 above set out, fixed a definite term of thirty years for the maintenance of the highway portion of the bridge by the railway company, and this thirty-year period expired on January 1, 1924. No new agreement was ever made between the Canadian Pacific Railway Company and the city of Ottawa in regard to maintenance or repair, but on August 26, 1926, the Canadian Pacific Railway Company entered into an agreement with the Hull Electric Railway Company under which agreement the Hull Electric Railway Company obtained running rights upon certain portions of the tracks of the Canadian Pacific Railway Company including running rights over the said bridge at a fixed rental of $6,000 per annum. This rental covered not only running rights over the said bridge, but also over other lines and bridges of the Lessors, and under the terms of this agreement the Canadian Pacific Railway Company agreed to maintain the highway portion of the said bridge in the following terms:—

> "The Pacific Company will maintain, renew and repair the substructure, ballast, ties, rails, switches and fastenings required for the said tracks, siding and diamond crossing, and also the planks and other surface material necessary for highway traffic on the Interprovincial bridge."

and up to the present time the Canadian Pacific Railway Company has continued to maintain the whole surface of the bridge without any contribution from any other person, company or municipality.

While it is manifest that persons or corporations who were not parties to the agreement made between the Canadian Pacific Railway Company and the Hull Electric Railway Company cannot invoke any of the terms or provisions of the agreement on their behalf, yet I think the Board may properly consider the special provision contained in this agreement in regard to the maintenance of the highway on the bridge as one of the circumstances bearing upon the question but not for the purpose of fixing liability or apportioning cost as between the parties.

The bridge has a total width over all of 66 feet, and only 28 feet of this width are occupied by the Canadian Pacific Railway Company for its own purposes, and the remaining 38 feet are utilized for the purposes of the Hull Electric Railway cars and vehicular and pedestrian traffic. The Canadian Pacific Railway Company assert that the maintenance cost upon the highway portion of the bridge has been for planking and labour about $6,000 per year, that there is also an annual cost of about $1,300 per year for removal of snow and for sanding of the roadway, and that there is also an additional cost of $1,724 per annum for watchmen, who are employed to protect against fire and repair any small breaks which may occur. Included in this amount of $1,724 is an item of $290 which represents the cost of lumber for these small repairs. There is, therefore, a total maintenance charge upon the highway portion of the bridge of about $9,150, according to statements submitted by the railway company.

The railway company also submitted a statement of the traffic over the bridge computed from the hour of 7 p.m. of Friday, September 20, to the hour of 7 p.m. of Saturday, September 21, 1935. It was, however, objected by counsel for the city of Ottawa that the usual traffic on Saturday was much heavier than on other days of the week. The city of Hull also submitted traffic figures showing the number of motor cars and motor trucks which passed over the bridge in a given time. While there may be a variation in the figures submitted according to the different days upon which they were taken, it is beyond question that a very heavy traffic passes over the highway portion of this bridge every day. According to the figures submitted by the Canadian Pacific Railway Company for the 24-hour period for which a count was had, there were only 17 train move-

ments and 17 light engine movements over the bridge, while the pedestrian traffic was 3,716, passenger autos 8,202, buses 40, auto trucks 1,897, single rigs 325, double rigs 77, street cars 291, motorcycles 34, bicycles 1,225. Counsel for the railway company argued with great force that as the whole character of the traffic over the bridge had changed since its inception and since the above recited agreements were made, that it would not be proper to place the whole cost of maintenance of the highway upon the railway company, and he urged very strenuously that some more equitable distribution of the cost of maintenance should be fixed as between the various parties benefiting by the bridge.

In its inception the present controversy arose through two accidents which occurred upon the bridge during the year 1934, and which were caused by the operation upon the bridge of the Hull Electric Railway Company's cars. The Board of its own motion caused an inquiry and report to be made in regard to these accidents, and as a result of this inquiry made the order above mentioned directing the erection of a guard-rail throughout the length of the bridge to afford as much protection as possible to pedestrians. This guard-rail has now been erected by the railway company and the only other outstanding question in respect of the Board's Order is that of lighting the bridge throughout its whole length. There seems to be no difficulty in regard to the question of lighting the bridge so far as concerns that portion of the bridge which extends from the city of Ottawa to the interprovincial boundary. Under the terms of the agreement made between the Pontiac Pacific Junction Railway Company and the city of Ottawa above recited, provision is made for the lighting of the bridge whereby the railway company is bound to erect and maintain such lamps on the highway portion of the bridge as the Council of the city of Ottawa may deem necessary, and the Corporation of the city of Ottawa is bound to supply, at its own expense, the light therefor. This provision in the agreement applies to the whole bridge structure from end to end in so far as the highway portion of the bridge is concerned and is unlimited as to time. This agreement was specially ratified by an Act of the Legislature of the Province of Ontario. The bridge itself is an interprovincial structure and under the jurisdiction of the Dominion Parliament and also under the jurisdiction of this Board.

Counsel on behalf of the city of Ottawa submitted that while the city of Ottawa was prepared to supply light upon the bridge to a point on the interprovincial boundary between Ontario and Quebec, the city of Ottawa could not legally supply light upon that portion of the bridge which extends into the province of Quebec. The agreement of December 14, 1893, provides that the city of Ottawa shall supply "at its own expense the light therefor as may by the said corporation be deemed expedient." This provision applied to the "highway portion" of the bridge. In my opinion there is no provision in the Railway Act conferring jurisdiction upon this Board to make an Order against a municipality under circumstances of this nature.

The Order of the Board No. 51416 directing the Canadian Pacific Railway Company to erect a hand-rail and to light the bridge deals with matters involving the safety and protection of the public against the dangerous operation of railways and, in my opinion, the Board had jurisdiction to make such an order under the general powers conferred upon it under Sections 257 and 259 of the Railway Act.

It is to be noted that on September 12, 1924, the Corporation of the city of Ottawa made application to the Board for an order determining by which one or more of several named parties the planking on the highway portion of the said bridge should be maintained, and the proportions in which the cost of such maintenance should be distributed amongst them. The parties named by the applicant in the application were the Canadian Pacific Railway Company, the Hull Electric Railway Company and the Corporation of the city of Hull. This

application was heard by the Board on November 4, 1924, and judgment was given to the effect that the Board had no jurisdiction to make an order in respect of the matters set out in the application. As no additional jurisdiction has been conferred upon the Board with respect to the question of maintenance since the above decision, I think no purpose could be served by making any pronouncement upon the question of either past, present or future maintenance of the highway portion of the bridge upon this application. It is clear that the question of planking and maintenance of the highway portion of the bridge and the supply of light thereon and the obligations of the various parties in respect thereof rest upon the statutory enactments and agreements above referred to, and the determination of these matters should be left to the courts.

For the above reasons I think the application should be dismissed, but saving to all parties any rights which they may seek to assert in the Courts.

November 8, 1935.

The Assistant Chief Commissioner and Commissioners Norris, Stoneman and Stone concurred.

Application of the Canadian Pacific Railway Company, under Section 39 of the Railway Act, for an Order directing the City of Ottawa, and, as the Board may see fit, all other interested parties, including the City of Hull, and the Hull Electric Railway Company, to pay the entire cost of construction and maintenance of the works directed by the Board under Order No. 51416, dated September 18, 1934, and of the surface portion of the bridge used for vehicular and pedestrian traffic.

File No. 33060.

Garceau, Deputy Chief Commissioner:

I would amend the order imposing the supply of light on the city of Ottawa, according to the terms of the contract ratified by a Special Act of the Ontario Legislature; but, as Mr. Proctor, Attorney for the city, contended that this obligation was null *ab initio* and *ultra vires* in so far as it concerned the portion of the bridge located in Quebec—though I am satisfied of its validity—and, as the civil courts are the proper authority to decide this constitutional issue and can enforce the contract, I agree with the judgment.

November 9, 1935.

ORDER No. 52474

In the matter of the Order of the Board No. 51416, dated September 18, 1934, directing the Canadian Pacific Railway Company, at its own expense, to erect a three-bar railing between the sidewalk and the roadway, immediately outside of the outstanding uprights, on both sides of the Interprovincial Bridge, for the whole length of the bridge; and to provide better lighting thereon, especially at each end of the bridge;

And in the matter of the application of the Canadian Pacific Railway Company, under Section 39 of the Railway Act, for an Order directing the City of Ottawa, and, as the Board may see fit, all other interested parties, including the City of Hull and the Hull Electric Railway Company, to pay the entire cost of construction and maintenance of the said works required by the Board under the said Order No. 51416, and of the surface portion of the bridge used for vehicular and pedestrian traffic.

File No. 33060

MONDAY, the 18th day of November, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, November 5, 1935, in the presence of counsel for the Canadian Pacific Railway Company, the City of Ottawa, the City of Hull, and the Hull Electric Railway Company, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52416

In the matter of the application of the Niagara, St. Catharines & Toronto Railway Company, hereinafter called the "applicant company," under section 334 of the Railway Act, for approval of its Standard Passenger Tariff C.R.C. No. 295, on file with the Board under file No. 34322.

TUESDAY, the 5th day of November, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that the present Standard Passenger Tariff of the applicant company C.R.C. No. 265 expires in November 30, 1935, and that the company desires to extend the fares for a further period of one year,—

It is ordered: That the applicant company's said Standard Passenger Tariff C.R.C. No. 295, effective December 1, 1935, be, and it is hereby, approved; the said tariff, together with a reference to this Order, to be published in two consecutive issues of the *Canada Gazette.*

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52426

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

TUESDAY, the 5th day of November, A.D. 1935.

Hon. HUGH GUTHRIE, K.C. *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item 558 of Supplement No. 22 to Tariff C.R.C. No. E-4742, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 22 to Tariff C.R.C. No. E-4742, approved herein, is 5 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52427

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

TUESDAY, the 5th day of November, A.D. 1935.

Hon. HUGH GUTHRIE, K.C. *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in items 427 and 1175 of Supplement No. 23 to Tariff C.R.C. No. E-4742, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 23 to Tariff C.R.C. No. E-4742, approved herein, are as follows, namely:—

	Cents per 100 pounds
Item 427	6½
Item 1175	5

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52428

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

TUESDAY, the 5th day of November, A.D. 1935.

Hon. HUGH GUTHRIE, K.C. *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published to Fredericton, New Brunswick, in first revised page 53 of Tariff C.R.C. No. E-4757, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are

hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said first revised page 53 of Tariff C.R.C. No. E-4757, approved herein, are as follows:—

	Cents per 100 pounds
In boxes or crates	100½
In bundles	151

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52429

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 5th day of November, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published to Imbertville and Bear River, Nova Scotia, in item 46-C of Supplement No. 47 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to be reported at 15·7 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 47 to Tariff C.R.C. No. 812, approved herein, is 18·25 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52430

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 5th day of November, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published from Middleton, Nova Scotia, in item 76-C of Supplement No. 90 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 90 to Tariff C.R.C. No. 856, approved herein, are as follows:—

	Cents per 100 pounds
Less than carloads	37½
Carloads	25½

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52445

In the matter of the application of the Canadian National Railways, hereinafter called the "applicants," under section 276 of the Railway Act, for authority to open for the carriage of traffic their revised line of railway between mileage 30·37 and 31·12 Tête Jaune Subdivision, in the province of British Columbia, a distance of 0·75 of a mile.

File No. 3452.43

FRIDAY, the 8th day of November, A.D. 1935.

Hon. HUGH GUTHRIE, K.C. *Chief Commissioner.*
Hon. T. C. NORRIS, *Commisisoner.*
J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Division Engineer of the Board, concurred in by its Chief Engineer,—

It is ordered: That the applicants be, and they are hereby, authorized to open for the carriage of traffic the revised line of their railway between mileage 30·37 and 31·12 Tête Jaune Subdivision, in the province of British Columbia, a distance of 0·75 of a mile.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52446

In the matter of tariffs, and supplements to tariffs, filed under the Maritime Freight Rates Act.

File No. 34822.12

FRIDAY, the 8th day of November, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

1. *The Board Orders*: That the tolls published in Tariff C.R.C. No. E-4757, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of Section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. E-4757, approved herein, are as follows:—

MILEAGE RATES IN CENTS PER 100 POUNDS—PAGES 19 AND 20, SECTION 1

	A	B		C	D		E		F	G	H
Miles		1	2		LCL	CL	LCL	CL			
5	15	5¼	4½	3	9	5	9½	3	4	5	3½
10	15	5¼	4½	3½	9	5	9½	3½	4	5	3½
15	15	5¾	5	4	10½	5½	11½	4	4	5½	3½
20	16½	5¾	5	4	10½	5½	12½	5	4	5½	3½
25	18	6¼	5½	5	12	6	14½	6½	4½	6	4½
35	24	6¾	6	5	13½	6½	18	7	5	6½	5½
40	24	6¾	6	5	13½	6½	19	7½	5	6½	5½
40	24	6¾	6	5	15½	6½	19	7½	5	6½	5½
45	25	7¾	7	5	15½	7½	19½	7½	5	7	6
50	25	7¾	7	5	15½	7½	19½	9	5	7	6
55	27½	8¼	7½	6½	17	9	22	9	5½	7½	6½
60	27½	8¼	7½	6½	17	9	22	9	5½	7½	6½
65	29	8¼	7½	6½	18	9½	24½	9	6½	8	7½
70	29	8¼	7½	6½	18	9½	24½	10½	6½	8	7½
75	32	9	8	6½	20½	10½	25	10½	7	8½	8½
80	32	9	8	7½	20½	10½	27½	11½	7	8½	8½
85	34½	9	8	7½	22½	11	27½	11½	8	9	9
90	34½	9	8	7½	22½	11	29	12	8	9	9
95	34½	9½	8½	7½	23½	12	29	12	8	9½	9½

Miles	A	B 1	B 2	C	D LCL	D CL	E LCL	E CL	F	G	H
100	34½	9½	8½	7½	23½	12	32	12	8	9½	9½
110	36½	10	9	9	26	12½	32	12½	9	10	10
120	36½	10	9	9	26	12½	32	12½	9	10	10
125	37½	10	9	9	26	12½	32	12½	9½	10	10
130	37½	10½	9½	10	27	13½	32	12½	9½	10	10
140	37½	10½	9½	10	27	13½	34½	14	10	10	10
150	41½	10½	9½	10	27	13½	34½	14	10	10	10
160	41½	11	10	10	29	14½	35	14½	10½	10½	10½
170	41½	11	10	10	29	14½	35	14½	11½	10½	10½
175	43	11	10	10	29	14½	37½	15½	11½	10½	10½
180	43	12	11	10	30	15½	37½	15½	11½	10½	10½
190	43	12	11	10	30	15½	40	15½	12	10½	10½
200	43	12	11	10	30	15½	40	16½	12	10½	10½
210	45½	12½	11½	12½	32½	16½	40½	16½	12½	11	11
220	45½	12½	11½	12½	32½	16½	40½	16½	13	11	11
225	45½	12½	11½	12½	32½	16½	41½	17	13	11	11
230	45½	13½	12½	12½	34	17	41½	17	13	11	11
235	47	13½	12½	12½	34	17	41½	17	14	11	11
240	47	13½	12½	12½	34	17	41½	17	14	11	11
250	47	13½	12½	12½	34	17	45½	17	14½	11	11
260	..	14	13	14	35½	17½	46½	17½	15	12	12
270	..	14	13	14	35½	17½	46½	17½	15	12	12
275	..	14	13	14	35½	17½	47	17½	15	12	12
280	..	14½	13½	14	..	..	47	17½	..	12	12
290	..	14½	13½	14	..	..	49	19	..	12	12
300	..	14½	13½	14	..	..	52	19	..	12	12
350	..	..	..	..	..	..	..	..	..	..	14

Miles	I 1	I 2	I 3	J	K	L	M	N LCL	N CL	O
5	4½	5½	24	3	5½	6	6	19	15	4
10	5½	7	24	3	6½	6½	6½	19	15	4
15	7½	9½	24	3½	7	7½	6½	19	15	4
20	9	11½	25	3½	7	9	7	19	15	4
25	10	12½	29	3½	8	9½	7½	19	15	4½
30	10	12½	32	3½	8	9½	7½	19½	16½	4½
35	11½	14½	36½	4½	9½	11	9	24	18	5
40	11½	14½	40	4½	9½	11	9	24	18	5
45	11½	14½	43	4½	10	12½	10	25	19½	5½
50	13	16½	43	4½	10	12½	10	25	19½	5½
55	14½	18	47	5½	11½	13½	11½	27½	22	5½
60	14½	18	47	5½	11½	13½	11½	27½	22	5½
65	14½	19½	50	5½	12	14½	11½	29	24	6
70	14½	19½	50	5½	12	14½	11½	29	24	6
75	15½	19½	54	5½	12½	15½	12½	32	25	6½
80	15½	22	58	5½	12½	15½	12½	32	25	6½
85	17½	22	58	5½	13	16½	13	34½	27½	7
90	17½	22	61½	5½	13	16½	13	34½	27½	7
95	17½	24	61½	5½	14½	17	14	34½	27½	7
100	17½	24	65	5½	14½	17	14	34½	27½	7
110	19	25	65	6	15½	17½	..	37½	29	7½
120	19	25	68	6	15½	17½	..	37½	29	7½
125	20	27½	68	6	15½	19½	..	40	30½	7½
130	20	27½	68	6½	16½	19½	..	40	30½	7½
140	20	29	72	6½	16½	19½	..	40	30½	7½
150	20	29	72	6½	16½	21	..	42½	32	7½
160	20	30½	75½	6½	17½	21	..	42½	32	8
170	20	30½	75½	6½	17½	22½	..	42½	32	8
175	22	32	79	6½	17½	22½	..	45½	34½	8
180	22	32	79	7½	18	22½	..	45½	34½	8
190	22	32	83	7½	18	23	..	45½	34½	8
200	22	34½	83	7½	18	23	..	45½	34½	8
210	23	34½	86½	..	19½	24	..	47	36½	8½
220	23	36½	86½	..	19½	24	..	47	36½	8½
225	23	37½	90	..	19½	26½	..	47	36½	8½
230	23	37½	90	..	20½	26½	..	47	36½	8½
235	24½	37½	90	..	20½	26½	..	49	37½	8½
240	24½	37½	90	..	20½	26½	..	49	37½	8½
250	24½	40	94	..	20½	29	..	49	37½	8½
260	24½	41½	97	..	22	29	..	..	..	9
270	25½	41½	97	..	22	30	..	..	..	9
275	25½	41½	100½	..	22	30	..	..	..	9
280	25½	41½	100½	..	..	30	..	..	..	9
290	25½	43	104	..	..	31½	..	..	..	9
300	27½	43	108	..	..	31½	..	..	..	9
350	..	..	..	..	..	..	..	..	..	10½

	Cents per 100 pounds	
Item 130	32	
Item 145	47	
Item 205—		
to Montreal, Que.	54	
to Toronto, Ont.	63	
	Per ton of 2,000 pounds	
Item 235	$3.60	
Item 250	1.60	
	Cents per 100 pounds	
Item 265	72½	
	CL	LCL
Item 280	56½	72½
Item 295—		
to Saint John, N.B.	15	
to Rivière du Loup, Que.	88	
Item 310—		
From		
Marysville, N.B.		
Saint John, N.B.		
West Saint John, N.B.		
To		
Belleville, Ont.	..	86½
Chatham, Ont.	..	113
Cap de la Madeleine, Que.	52½	79
Coaticook, Que.	..	79
Cornwall, Ont.	55½	84½
Drummondville, Que.	..	79
Galt, Ont.	..	102½
Grand'Mère, Que.	50	75½
Guelph, Ont.	..	100½
Hamilton, Ont.	65	97
Kingston, Ont.	59	86½
Kitchener, Ont.	..	102½
Levis, Que.	49	74
London, Ont.	72	108
Magog, Que.	52½	79
Montreal, Que.	52½	79
Ottawa, Ont.	55½	84½
Paris, Ont.	..	102½
Peterborough, Ont.	..	91½
Quebec, Que.	49	74
St. Catharines, Ont.	..	100½
St. Hyacinthe, Que.	..	79
Sherbrooke, Que.	..	74
Toronto, Ont.	63	95½
Trois Rivières, Que.	52½	79
Walkerville, Ont.	..	113
Welland, Ont.	..	100½
Windsor, Ont.	..	113
Woodstock, Ont.	..	106½
From Milltown, N.B., above normal rates plus 2½ cents will apply.		
Item 325—		
To		
Halifax, N.S.	76½	
Truro, N.S.	70	
Item 340—		
To		
Brantford, Ont.	41½	
Goderich, Ont.	45½	
Hamilton, Ont.	40	
Levis, Que.	34½	
London, Ont.	45½	
Montreal, Que.	34½	
Niagara Falls, Ont.	40	
Orillia, Ont.	40	
Ottawa, Ont.	36½	
Quebec, Que.	34½	
St. Catharines, Ont.	40	
St. Johns, Que.	34½	
Stratford, Ont.	43	
Toronto, Ont.	37½	
Welland, Ont.	40	
Windsor, Ont.	47	
Woodstock, Ont.	43	

Item 430—

To	
Abbotsford, Que.	23½
Abercorn, Que.	23½
Adamsville, Que.	23½
Adirondack Junction, Que.	26
Bedford, Que.	25½
Chicoines, Que.	23½
Cookshire, Que.	22½
Cowansville, Que.	23½
Drummondville, Que.	26
Enlaugra, Que.	23½
Glenton, Que.	23½
Highwater, Que.	23½
Iberville, Que.	26
Iberville Junction, Que.	26
Levis, Que.	26
Malvina, Que.	22½
Mansonville, Que.	23½
Mégantic, Que.	20½
Mount Orford, Que.	22½
Quebec, Que.	26
St. Guillaume, Que.	26
St. Hyacinthe, Que.	26
St. Pie, Que.	26
Ste. Rosalie, Que.	26
Ste. Rosalie Junction, Que.	26
Sherbrooke, Que.	22½
Stanbridge, Que.	26
Toronto, Ont.	37½
Tourvilles, Que.	26
Windsor Mills, Que.	23½

Item 445—

To	
Annidale, N.B.	9
Barker, N.B.	10½
Belle Isle, N.B.	9
Chipman, N.B.	12½
Cody, N.B.	9½
Cumberland Bay, N.B.	9½
Scotch Settlement, N.B.	9
Thorne, N.B.	9
Washademoak, N.B.	9½
Young's Cove Road, N.B.	9½

Item 475—

	From Fairville, N.B. Fredericton, N.B. St. Andrews, N.B. Saint John, N.B. St. Stephen, N.B. W. Saint John, N.B.			From Halifax, N.S.			From Yarmouth, N.S.		
To	1	2	3	1	2	3	1	2	3
Brantford, Ont.	70	63½	..	72	65½	..	78½	77½	..
Brockville, Ont.	55½	52	48½	57	53½	50	63½	63½	55½
Cap de la Madeleine, Que.	50	47½	..	54	48½	..	..	..	..
Chatham, Ont.	75½	67	66	77½	68½	67½	85	81½	73½
Grand'Mère, Que.	50	50	..	50	50	..	57½	57½	..
Guelph, Ont.	68½	67½	..	70½	69½	..	77½	75	..
Hamilton, Ont.	65	59½	55½	66½	61	58	73½	73½	62½
Joliette, Que.	52½	51½	..	53	52	..	60½	60½	..
London, Ont.	72	65½	63	74	67½	65	81	80	70
North Bay, Ont.	66½	62	58½	68	63½	60½	75	75	66
Ottawa, Ont.	55½	52	50	57	53½	50	63½	63½	56
St. Thomas, Ont.	72	67½	63	73	68½	65	80	80	71
Shawinigan Falls, Que.	50	50	..	50	50	..	57½	57½	..
Sherbrooke, Que.	50	50	..	50	50	..	56½	56½	..
Sudbury, Ont.	72½	68	63½	74	69½	65	80½	80½	70½
Toronto, Ont.	63	57½	55½	64	58½	55½	71	71	61½
Trois Rivières, Que	50	47½	..	54	48½	..	..	..	..
Welland, Ont.	..	..	58	70½	..	59½	77½	..	66
Windsor, Ont.	75½	69	67	77½	71	69	85	84	75

Item 490—

From	To	1	2	3	4	5
Saint John, N.B., etc.	Levis, Que.	49	44	39½	49	49
	Montreal, Que.	50	47	42½	50	50
	Quebec, Que.	50	44	39½	49	47½
Halifax, N.S.	Levis, Que.	49	44	39½	49	49
	Montreal, Que.	50	49	44	50	50
	Quebec, Que.	50	45½	40½	50	49
Yarmouth, N.S.	Levis, Que.	56½	50½	46	56½	56½
	Montreal, Que.	56½	54½	49	56½	56½
	Quebec, Que.	57½	50½	46	57½	57½

Item 545—

To	Cents per 100 pounds From Halifax, N.S.	From Saint John, N.B. West Saint John, N.B.
Alvinston, Ont.	41½	38
Amherstburg, Ont.	41	38
Belleville, Ont.	38½	34
Blytheswood, Ont.	41	38
Brampton, Ont.	40	38
Brantford, Ont.	40½	36½
Brigden, Ont.	41	38
Brockville, Ont.	35½	33
Chatham, Ont.	43½	40½
Cornwall, Ont.	30	27½
Courtright, Ont.	41	38
Dundas, Ont.	40	38
Dunnville, Ont.	40	37
Elmira, Ont.	40½	36½
Elora, Ont.	40½	36½
Essex, Ont.	41	38
Galt, Ont.	40½	36½
Goderich, Ont.	40½	37
Guelph, Ont.	40½	37
Hamilton, Ont.	40	38
Hanover, Ont.	41½	38
Harrow, Ont.	41	38
Kingston, Ont.	36½	32
Kitchener, Ont.	40½	36½
Leamington, Ont.	41	38
Lennoxville, Que.	28½	26
Levis, Que.	28½	27
Lindsay, Ont.	39½	36
Listowel, Ont.	40½	38½
London, Ont.	40½	38½
Midland, Ont.	42½	38
Montreal, Que.	27½	24½
Orillia, Ont.	40	38
Item 550—		
Oshawa, Ont.	40½	37
Owen Sound, Ont.	41	38
Peterborough, Ont.	39	37
Petrolia, Ont.	42½	39½
Port Colborne, Ont.	40½	37
Port Dover, Ont.	42	38½
Prescott, Ont.	33	31
Quarries, Ont.	41	38
Quebec, Que.	28½	27
Renfrew, Ont.	34½	32
Ridgetown, Ont.	41	38
St. Hyacinthe, Que.	27½	24½
St. Marys, Ont.	40½	38½
Ste. Rosalie, Que.	27½	24½
St. Thomas, Ont.	40	38
Sarnia, Ont.	42½	39½
Sherbrooke, Que.	28½	26
Simcoe, Ont.	40	37
Spencerville, Ont.	33	31
Streetsville, Ont.	40	38
Swan, Ont.	33	31
Teeswater, Ont.	41½	38
Tilsonburg, Ont.	40½	37½
Toronto, Ont.	40½	37
Trenton, Ont.	38½	34
Tweed, Ont.	38½	34
Walkerton, Ont.	41½	38

To	Cents per 100 pounds From Halifax, N.S.	From Saint John, N.B. West Saint John, N.B.
Winchester, Ont.	32	30
Windsor, Ont.	42½	39½
Wingham, Ont.	41½	38
Woodslee, Ont.	41	38
Woodstock, Ont.	40½	37½

Item 620—

From	To	Cents per 100 pounds
Kingston, N.S.	Toronto, Ont.	74
Sheffield Mills, N.S.	Montreal, Que.	59
	Toronto, Ont.	75
Wolfville, N.S.	Montreal, Que.	60½
	Toronto, Ont.	77

Item 630	22½
Item 660—	
Abercorn, Que.	19½
Berthierville, Que.	20
Cap de la Madeleine, Que.	20
Drummondville, Que.	20
Farnham, Que.	19½
Grandes Piles, Que.	19
Grand'Mère, Que.	20
Levis, Que.	21½
Malvena, Que.	20
Mansonville, Que.	19½
Montreal, Que.	19½
Quebec, Que.	21½
St. Gabriel, Que.	20
St. Guillaume, Que.	19½
St. Johns, Que.	19½
Ste. Rosalie, Que.	19½
Stanbridge, Que.	19½
Trois Rivières, Que.	20
Waterloo, Que.	19½
Windsor Mills, Que.	20
Item 675—	
Aroostook, N.B.	19½
Bartlett, N.B.	14½
Barton, N.B.	16½
Bay Shore, N.B.	5½
Benton, N.B.	18
Brunswick, N.B.	14½
Canterbury, N.B.	18
Debec, N.B.	18
Dumbarton, N.B.	14½
Edmundston, N.B.	24
Fairville, N.B.	5½
Florenceville, N.B.	19½
Fredericton, N.B.	12½
Fredericton Junction, N.B.	11½
Grand Falls, N.B.	19½
Green River, N.B.	22
Green Road, N.B.	18
Hale, N.B.	18
Harvey, N.B.	12½
Hoyt, N.B.	11½
Keswick, N.B.	14½
Kilburn, N.B.	19½
Limestone, N.B.	19½
McAdam, N.B.	16½
McKenna, N.B.	18
McNinn, N.B.	12½
Magaguadavic, N.B.	14½
Maxwell, N.B.	16½
Milltown, N.B.	16½
Millville, N.B.	18
Moore's Mills, N.B.	16½
Musquash, N.B.	9½
Newburg, N.B.	18
North Devon, N.B.	12½
Oak Bay, N.B.	14½
Otis, N.B.	18

	Cents per 100 pounds
Pennfield, N.B.	11½
Perth Junction, N.B.	19½
Plaster Rock, N.B.	19½
Quisibis, N.B.	22
St. Andrews, N.B.	16½
St. Basil, N.B.	24
St. George, N.B.	12½
St. Leonard, N.B.	22
St. Stephen, N.B.	16½
South Bay, N.B.	5½
Stickney, N.B.	19½
Sugar Brook, N.B.	16½
Taylor's N.B.	7
Tinker, N.B.	19½
Tracy, N.B.	11½
Upper Woodstock, N.B.	18
Watt, N.B.	16½
Welsford, N.B.	9½
Westfield Beach, N.B.	7
Wickham, N.B.	18
Woodstock, N.B.	18
F. & G.L.C. Stations, N.B.	19
N.B.C. Stations, N.B.	19
From	
Hartland, N.B.	
To	
Chipman, N.B.	24½
Item 690	3
Item 750—	
To	
Montreal	
From	
Fredericton, N.B.	34½
Grand Falls, N.B.	33
Plaster Rock, N.B.	34½
Woodstock, N.B.	34½

Item 765— To	Cattle Sheep	Horses
Montreal, Que.	37	55
Saint John, N.B.	20	29

Item 825—	
To	
Montreal, Que.	28½
Ottawa, Ont.	36½
Item 840	56
	Per Ton of 2,240 Lbs.
Item 855	$7.50
	Cents per 100 pounds
Item 870	49
Item 885—	
To	
Brantford, Ont.	58
Galt, Ont.	58
Guelph, Ont.	56½
Halifax, N.S.	41½
Hamilton, Ont.	55½
Kitchener, Ont.	58
Levis, Que.	39
London, Ont.	61½
Montreal, Que.	44½
Niagara Falls, Ont.	56½
Ottawa, Ont.	47
Owen Sound, Ont.	64
Peterboro, Ont.	52½
Quebec, Que.	39
Saint John, N.B.	38½
St. Johns, Que.	44½
Toronto, Ont.	54

	Cents per 100 pounds
Item 900—	
To	
Beauharnois, Que.	41½
Belleville, Ont.	42
Brantford, Ont.	47½
Brockville, Ont.	36
Chatham, Ont.	32
Cornwall, Ont.	57
Galt, Ont.	47½
Guelph, Ont.	45½
Hamilton, Ont.	44½
Ingersoll, Ont.	49½
Kingston, Ont.	39½
Kitchener, Ont.	47½
Levis, Que.	28½
London, Ont.	49
Montreal, Que.	52½
Niagara Falls, Ont.	45
Orillia, Ont.	48½
Paris, Ont.	47½
Peterboro, Ont.	42½
Port Dalhousie, Ont.	45
Prescott, Ont.	36
Quebec, Que.	28½
St. Catharines, Ont.	45
Toronto, Ont.	41½
Trenton, Ont.	42
Victoria Park, Ont.	45
Walkerville, Ont.	52
Windsor, Ont.	52
Woodstock, Ont.	47½
Item 915—	
To	
Berwick, N.S.	59
Kentville, N.S.	62
Item 930	18
Item 945—	
To	
Chipman, N.B.	26
Edmundston, N.B.	34
Fredericton, N.B.	19
Grand Falls, N.B.	31
Hartland, N.B.	27½
Norton, N.B.	13½
Perth Junction, N.B.	30
St. Stephen, N.B.	19
Woodstock, N.B.	27½
Item 960—	
To	
Belleville, Ont.	44
Berthierville, Que.	40½
Brantford, Ont.	51
Brockville, Ont.	41½
Buckingham, Que.	42
Cap de la Madeleine, Que.	39
Chatham, Ont.	56½
Cornwall, Ont.	41½
Fredericton, N.B.	24
Galt, Ont.	51
Grand'Mère, Que.	39½
Guelph, Ont.	49½
Halifax, N.S.	37
Hamilton, Ont.	49
Ingersoll, Ont.	53
Joliette, Que.	40½
Kingston, Ont.	43½
Kitchener, Ont.	51
Lachute, Que.	42
Levis, Que.	34½
Lindsay, Ont.	47½
London, Ont.	54
Middleton, N.S.	40½
Montreal, Que.	39½
Niagara Falls, Ont.	50
North Bay, Ont.	49½

	Cents per 100 pounds
Orillia, Ont.	49
Ottawa, Ont.	42
Owen Sound, Ont.	56½
Paris, Ont.	51
Parry Sound, Ont.	50
Pembroke, Ont.	43½
Perth Junction, N.B.	18
Peterboro, Ont.	45½
Plaster Rock, N.B.	20½
Prescott, Ont.	41½
Quebec, Que.	34½
St. Andrews, N.B.	27½
St. Jerome, Que.	42
Saint John, N.B.	28
St. Johns, Que.	39½
St. Marys, Ont.	54
St. Stephen, N.B.	26
St. Thomas, Ont.	54
Sarnia, Ont.	56½
Shawinigan Falls, Que.	39½
Sherbrooke, Que.	37
Simcoe, Ont.	53
Smiths Falls, Ont.	41½
Sudbury, Ont.	56½
Toronto, Ont.	47
Trenton, Ont.	44
Trois Rivières, Que.	39½
Truro, N.S.	34
Victoria Park, Ont.	50
Walkerville, Ont.	56½
Wallaceburg, Ont.	56½
Waterloo, Ont.	51
Windsor, Ont.	56½
Windsor Mills, Que.	39½
Woodstock, N.B.	22
Woodstock, Ont.	53
Yarmouth, N.S.	44½
Item 975—	
From	
Saint John, N.B.	
To	
Pont Rouge, Que.	32
Portneuf, Que.	32
From	
St. Stephen, N.B.	
To	
Glen Miller, Ont.	37½
Item 990—	
To	
New Liskeard, Ont.	70
North Bay, Ont.	49½
Sault Ste. Marie, Ont.	59
Sudbury, Ont.	52½
Item 1005—	
To	
New Liskeard, Ont.	79½
North Bay, Ont.	56
Sault Ste. Marie, Ont.	67½
Sudbury, Ont.	60
Item 1020—	
To	
Brantford, Ont.	56½
Levis, Que.	41½
Montreal, Que.	44½
Quebec, Que.	41½

Item 1050— To	Petroleum and petroleum products	Fuel and gas oil
Edmundston, N. B.	39½	37
Grand Falls, N.B.	40	37½
Plaster Rock, N.B.	36½	34
St. Leonard, N.B.	40½	38
Item 1060	16½	
Item 1065	28	

	Cents per 100 pounds
Item 1080—	
To	
Beloeil, Que.	38½
Brampton, Ont.	47½
Brantford, Ont.	49
Caledonia, Ont.	49
Cardinal, Ont.	41
Cornwall, Ont.	41
Danville, Que.	39½
Goderich, Ont.	54
Guelph, Ont.	49½
Hamilton, Ont.	48½
Kingston, Ont.	43
Kitchener, Ont.	49
Levis, Que.	38
London, Ont.	53
Magog, Que.	38½
Montreal, Que.	38½
Nobel, Ont.	53
Peterborough, Ont.	44½
Port Credit, Ont.	48½
Quebec, Que.	38
St. Catharines, Ont.	48
St. Hyacinthe, Que.	38½
Sherbrooke, Que.	37½
Toronto, Ont.	47
Valleyfield, Que.	40
Waterloo, Que.	38½
Welland, Ont.	48½
Woodstock, Ont.	52

	Cents per car mile
Item 1095—	
Baggage	16
Box	12
Caboose, four wheeled	8½
Caboose, eight-wheeled	12
Chair	20
Coach	20
Coal or Coke	8½
Dining	24
Dump	8½
Express	16
Flat or Platform	8½
Flat, with fixed, etc.	8½
Freight cars, NOIBN	12
Gondola	8½
Live Stock, not slatted	16
Live Stock, slatted	12
Mail	16
Parlour	24
Passenger cars, NOIBN	20
Refrigerator	12
Sleeping	24
Tank	8½
Track Scale Testing	16

Item 1135—		
To		
	Cents per 100 pounds	
Edmundston, N.B.	19½	
Fredericton, N.B.	13	
Grand Falls, N.B.	18	
Marysville, N.B.	13	
Milltown, N.B.	10	
Plaster Rock, N.B.	17½	
St. Leonard, N.B.	19	
St. Stephen, N.B.	10	
Woodstock, N.B.	15½	
	CL	LCL
Item 1165	36½	68
Item 1195	15	17½
Item 1210—		
To		
Edmundston, N.B.	36½	
Fredericton, N.B.	30½	
Grand Falls, N.B.	36½	
Woodstock, N.B.	36½	

	Cents Per 100 Pounds			
	In Boxes or Crates		In Bundles	
Item 1180— To	A	B	A	B
Belleville, Ont.	127	93½	190½	154
Brantford, Ont.	145	111½	217½	181
Brockville, Ont.	123	89½	184½	148
Chatham, Ont.	158½	125½	238	202
Cobalt, Ont.	192	158½	288	251½
Cochrane, Ont.	210	176½	315	278½
Cornwall, Ont.	123	89½	184½	148
Edmundston, N.B.	110	76½	165	130
Galt, Ont.	145	111½	217½	181
Guelph, Ont.	141	108	211½	175½
Haileybury, Ont.	192	158½	288	251½
Hamilton, Ont.	138	104½	207	171
Hanover, Ont.	155½	123	233	198
Iroquois Falls, Ont.	210	176½	315	278½
Kingston, Ont.	127	93½	190½	154
Kitchener, Ont.	145	111½	217½	181
Levis, Que.	116	86	174	144½
Lindsay, Ont.	133½	100½	200½	165
London, Ont.	152	118½	228	191½
Midland, Ont.	145	111½	217½	181
Montreal, Que.	120	85½	180	143
New Liskeard, Ont.	195	162	292½	256
Niagara Falls, Ont.	141	108	211½	175½
North Bay, Ont.	141	108	211½	175½
Ottawa, Ont.	123	89½	184½	148
Pembroke, Ont.	123	90	184½	148½
Peterboro, Ont.	130	97½	195	160
Perth, Ont.	123	..	184½	..
Port Hope, Ont.	130	97½	195	160
Quebec, Que.	116	86	174	144½
Renfrew, Ont.	123	90	184½	148½
St. Catharines, Ont.	141	108	211½	175½
St. Jovite, Que.	123	..	184½	..
St. Thomas, Ont.	152	119	228	192
Sault Ste. Marie, Ont.	166	129½	249	208
Sherbrooke, Que.	120	82	180	137½
Staynerville, Que.	123	..	184½	..
Sudbury, Ont.	152	119	228	192
Timmins, Ont.	210	176½	315	278½
Toronto, Ont.	133½	100½	200½	165
Trenton, Ont.	127	93½	190½	154
Trois Rivières, Que.	120	85	180	142½
Victoria Park, Ont.	141	108	211½	175½
Woodstock, Ont.	148	116	222	187½

	Cents per 100 pounds
Item 1225	94
Item 1255— To	
Cardinal, Ont.	42
Port Credit, Ont.	48½
Item 1270— To	
Beauharnois, Que.	28
Belleville, Ont.	30½
Campbellford, Ont.	32
Cornwall, Ont.	28
Dundas, Ont.	35
East Angus, Que.	25½
Frankford, Ont.	30½
Gatineau, Que.	28
Georgetown, Ont.	35
Glen Miller, Ont.	30½
Grand'Mère, Que.	25½
Joliette, Que.	25½
Kingsey, Que.	25½
Lachute, Que.	28
Merritton, Ont.	35
Mille Roches, Ont.	28
Montreal, Que.	25½
Mont Rolland, Que.	28
Ottawa, Ont.	28
Pont Rouge, Que.	25½

	Cents per 100 pounds
Portneuf, Que.	25½
St. Basile, Que.	25½
St. Catharines, Ont.	35
St. Jerome, Que.	28
Sault Ste. Marie, Ont.	49½
Shawinigan Falls, Que.	25½
Strathcona, Ont.	30
Thorold, Ont.	35
Toronto, Ont.	34½
Trenton, Ont.	30½
Welland, Ont.	35
Windsor Mills, Que.	25½
Cap de la Madeleine, Que. / Trois Rivières, Que.	28
Item 1285	23
Item 1300	28
Item 1325— To	
London, Ont.	147½
Montreal, Que.	108
Ottawa, Ont.	115
Toronto, Ont.	130

From and to points on the Dominion Atlantic Railway, 1½ cents per 100 pounds to be deducted account of water haul.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52448

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and Order No. 52400, dated October 28, 1935.

File No. 34822.13

FRIDAY, the 8th day of November, A.D. 1935.

Hon. HUGH GUTHRIE, K.C. *Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon its appearing that the Dominion Atlantic Railway Company has made changes in the divisions applicable to Tariff C.R.C. No. 979, approved by the said Order No. 52400,—

It is ordered: That the said Order No. 52400, dated October 28, 1935, be, and it is hereby, amended by striking out the two paragraphs under the heading, "Via Truro," on page 2, and substituting therefor the following, namely:—

"The Dominion Atlantic Railway Company's proportion to all destinations to be reported as follows:—

From		Cents per 100 pounds Billed	Normal
Windsor-Falmouth, N.S.		14.2	17.7
Hantsport, N.S.		15	18.8
Avonport to Grand Pré, N.S.		16.1	20.1
Wolfville, N.S.		16.6	20.8
Port Williams, N.S.		17.1	21.4
Kentville, N.S.		17.6	22
Mill Village, N.S.		17.8	22.3
Centreville to Kingsport, N.S. / Coldbrook to Berwick, N.S.		18.4	23
Aylesford to Kingston, N.S.		19.5	24.4
Wilmot, N.S.		18.6	23.3
Middleton, N.S.	(1)	6	7.5
Bricton to Paradise, N.S.		21	26.2
Bridgetown, N.S.	(1)	6	7½
Tupperville to Annapolis, N.S.		21.4	26.8
Upper Clements to Digby, N.S.		22.4	28
North Range to Ohio, N.S.		22.8	28.5
Hebron, N.S.		21.4	26.7
Yarmouth, N.S.	(2)	10	12.5
Billtown to Woodville, N.S.		19	23.7
Grafton, N.S.		19.5	24.4
Somerset-Weston, N.S.		20.1	25.1

(1) On traffic destined to Sault Ste. Marie, Ont., the Dominion Atlantic Railway Company's proportion of the billed rate is 4 cents, normal 5 cents, per 100 pounds.

(2) On traffic destined to Cobalt, Cochrane, Kirkland Lake, and Timmins, Ont., and Noranda, Que., the Dominion Atlantic Railway Company's proportion of the billed rate is 9 cents, normal 11·25 cents, per 100 pounds. When destined Sault Ste. Marie, Ont., the Dominion Atlantic Railway Company's proportion of the billed rate is 7 cents, normal 8·75 cents, per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52449

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 9th day of November, A.D. 1935.

Hon. HUGH GUTHRIE, K.C. *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item 58 of Supplement No. 49 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to be reported at 70 cents per puncheon.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 49 to Tariff C.R.C. No. 812, approved herein, is 87 cents per puncheon.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52450

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 9th day of November, A.D. 1935.

Hon. HUGH GUTHRIE, K.C. *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published from Kennetcook, N.S., in item 5A of Supplement No. 24 to Tariff C.R.C. No. 906, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 24 to Tariff C.R.C. No. 906, approved herein, is 10½ cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52458

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

TUESDAY, the 19th day of November, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published from Lakeville, Nova Scotia, in item 620, also item 635 of first revised page 36; to Kentville, Nova Scotia, in item 915 of first revised page 47; and item 1290, also to Toronto, Ontario, in item 1350 of first revised page 55 of,—Tariff C.R.C. No. E-4757, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said revised pages of 36, 47, and 55 of Tariff C.R.C. No. E-4757, approved herein, are as follows:—

	Cents per 100 pounds
Item 620	
To	
Montreal, P.Q.	59
Toronto, Ont.	75
Item 635	23½
Item 915	
To	
Kentville, N.S.	60
Item 1290	7
Item 1350	
To	
Toronto, Ont.	Second-class rate from Saint John, N.B.

H. GUTHRIE,
Chief Commissioner.

GENERAL ORDER No. 544

In the matter of the General Order of the Board No. 195, dated June 23, 1917, providing for the collection of cartage charges on carload traffic based on the actual weight subject to the minimum carload weight provided in the Canadian Freight Classification.

File No 18663.51

TUESDAY, the 5th day of November, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered:

1. That the tariffs of railway companies subject to the jurisdiction of the Board be amended by striking out the clause reading as follows:—

> "Cartage charges will be collected on the basis of actual weight subject to the minimum provided in the Canadian Freight Classification;"

And that there be substituted therefor the following:—

"Cartage charges on carload shipments will be collected on the basis of the actual weight, subject to the minimum carload weight provided in the Canadian Freight Classification if a specific carload rating is provided therein; otherwise the minimum weight provided in the freight classification under which the traffic moves will govern."

2. That the said General Order No. 195, dated June 23, 1917, be rescinded.

H. GUTHRIE,
Chief Commissioner.

GENERAL ORDER No. 545

In the matter of the application of the Department of Marine for Canada for an Order amending paragraph 1861 (a) of the Regulations for the Transportation by Freight of Dangerous Articles other than Explosives, approved by General Order No. 203, dated August 11, 1917, so as to provide for the use of British-made cylinders for the carriage of acetylene gas by freight.

File No. 1717.25.4

WEDNESDAY, the 6th day of November, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading the application and the consents of the Bureau of Explosives, The People's Gas Supply Co., Ltd., and the Canadian Liquid Air Co., Limited, filed; and upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That paragraph 1861 (*a*) of the Regulations for the Transportation by Freight of Dangerous Articles other than Explosives, approved by the said General Order No. 203, dated August 11, 1917, be amended by adding thereto the following, namely:—

"Cylinders made in England and approved by H.M. Inspector of Explosives for use as containers of dissolved acetylene gas in Great Britain are authorized for use in the Dominion of Canada under these regulations, upon the following conditions:—

"1st. Copies of reports of material, manufacture, tests, and other data as required or customary in Great Britain shall be furnished to the Canadian purchaser and to the Inspector, Bureau of Explosives, Union Station, Toronto, Canada. These reports shall also include a statement that the porosity of the porous filling is not over 80 per cent.

"2nd. The Canadian purchaser must obtain approval of the porous filling material and of the safety devices as required by paragraphs 1861 (*j*) and 1862 (*a*) of these regulations.

"3rd. The cylinders must bear markings stamped into the head or shoulder of the cylinder as follows:—

"Serial number (not the maker's number).

"The mark CRC-8A, placed immediately above the serial number specified above. This shall be understood to certify that the cylinder complies with all requirements.

"The purchaser's identification mark; this must be registered with the Bureau of Explosives (see above).

"The tare weight of the cylinder in pounds and ounces (for example, T.W. 189-6). This shall be the combined weight of cylinder, porous filling, valve, and solvent, but without removal cap (if any).

"Date of manufacture, month and year (for example, 7-35).

"4th. Any such cylinders imported into the Dominion of Canada prior to the issuance of this order may be qualified by application of the marks specified above after filing evidence with the Bureau of Explosives (see above) that the other provisions of this order are essentially fulfilled."

H. GUTHRIE,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONEDS, FOR AUGUST, 1935

Railway accidents	233, with	15 killed and	241 injured
Railway accidents at highway crossings	29, with	17 killed and	45 injured
	262	32	286

	Killed	Injured
Passengers	—	55
Others	29	82
Employees	3	149
	32	286

DETALS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of accidents	
	Nova Scotia
1	Automobile—Auto driver failed to see or hear train. Licence N.S. 61-551
1	Auto Truck—Auto driver's foot caught between brake and clutch, could not stop. Licence N.S. C-12353
	New Brunswick
1	Automobile—Auto ran into side of train. Licence N.B. F-1823
	Quebec
1	Automobile—Auto ran into side of train. Licence Que. T-1774
1	Automobile—Driver disregarded crossing bell and wig wag. Licence Que. 109457
1	Automobile—Auto stalled on crossing. Licence Que. 83519
1	Automobile—Auto driver failed to stop for crossing. Licence Maine FA-140
1	Auto Truck—Driver failed to stop for crossing. Licence Que. L-6434
1	Pedestrian—Pedestrian deaf, did not hear bell or train
1	Pedestrian—Boy jumped off car at crossing
	Ontario
3	Automobile—Ran into side of train. Licences Ont. LH-100, L. Hanson, 103 Ave. West, North Bay. Licence Ont. DK-380, L. Forler, Waterloo. Licence Ont. S-503, Francis Donnelly, 150 Broughdale Ave., London
3	Automobile—Driver failed to see or hear train. Licences, Ont. Z-9649, A. Sanderson, Chesley; Ont. S-3446, R. L. Guest, R.R. No. 5, London; Ont. KV-464, B. McCullough, 46 Railroad Ave., Sault Ste. Marie
1	Automobile—Driver attempted to beat train. Licence Ont. W-5211, Geo. Foy, "Old Oaken Bucket," Essex
1	Automobile—Excessive speed of auto. Licence KU-691, N. W. Kirby, Kirby's Corners
1	Auto Truck—Ran into side of train. Licence Ont. 11142-C. F. Goy (address not shown)
1	Auto Truck—Defective brakes on truck. Licence Ont. 54730-C. R. Portanen (address not shown)
1	Bicycle—Cyclist failed to observe warning signal
	Manitoba
1	Automobile—Ran into side of train. Licence Man. 56-270
1	Automobile—Driver failed to see or hear train. Licence Man. 26956
	Alberta
1	Auto Truck—Driver deaf, failed to see or hear train. Licence Alta. B-3-689
1	Auto Truck—Licence number not shown

SASKATCHEWAN

1 Automobile—Driver failed to hear warning signals. Licence Sask. 25-878

BRITISH COLUMBIA

1 Automobile—Driver failed to see or hear train. Licence B.C. 56951
1 Automobile—Driver lost control of auto. Licence number not shown
1 Auto Truck—Driver failed to take precautions. Licence B.C. 23484.

Of the 29 accidents at highway crossings, 7 occurred at Protected crossings, and 22 at Unprotected crossings. Seventeen of the accidents occurred during the daylight hours and 12 at night.

OTTAWA, November 8, 1935.

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The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXV. Ottawa, December 15, 1935 No. 20

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Complaint of the Vancouver Board of Trade, concerning Surcharge Regulations governing when United States funds are at a discount, or at a premium, in Canada.

File No. 29674.68

JUDGMENT

McLean, Assistant Chief Commissioner:

There are two arrangements provided for governing the payment of charges on international freight shipments, which, so far as concerns what is here in issue, may be described as follows:—

Arrangement No. 1

Effective January 22, 1921, and authorized by General Order No. 326, dated January 14, 1921, applying when United States funds are at a premium in Canada of seven-eighths of 1 per cent or more.

A surcharge of 60 per cent of the rate of exchange is added to the total through charges when paid in Canada. When the charges are paid in the United States, no surcharge is added, nor is any discount deducted.

Arrangement No. 2

Effective November 1, 1934, and authorized by General Order No. 527, dated October 25, 1934, applying when United States funds are at a discount in Canada of seven-eighths of 1 per cent or more.

When any charges on domestic international traffic are paid in Canada, a discount equivalent to 60 per cent of the rate of exchange shall be deducted from such charges. When any charges are paid in the United States, a surcharge thereon equivalent to 40 per cent of the rate of exchange shall be collected in Canadian funds in Canada.

Judgment and order of the Board giving full details of Arrangement No. 1 will be found in Volume 10, Board's Judgments and Orders, page 479, and, with respect to Arrangement No. 2, in Volume 24, Board's Judgments and Orders, page 265.

Prior to Arrangement No. 1 being made effective, United States funds were at a considerable premium in Canada and the Canadian railways found it becoming a very general practice for shippers to prepay the charges on international shipments from Canada to the United States, where, formerly, they had been forwarded with charges to collect at destination. Inasmuch as the United States lines have always required payment of their proportion of such charges in United States funds, the Canadian railways were suffering considerable losses. To protect themselves, they issued instructions to their agents that they must not accept prepayment of charges from shippers on such traffic, except on the classes thereof, with respect to which, the classification, or tariff, required prepayment. This action resulted in complaints to the Board. The matter was heard at two sittings of the Board and, by General Order No. 295, dated May 5, 1920, the complaints were dismissed for want of jurisdiction over the subject-matter thereof. The Board's Judgments, based on which the order issued, deal fully with the question, Volume 10, Board's Judgments and Orders, page 115. The situation, shortly thereafter, was that shippers from Canada to the United States were prevented from prepaying charges through to destination and the United States railways demanded prepayment of charges on shipments from the United States to Canada, with the result that all such charges were paid in the United States and, where these charges had to be borne by Canadian shippers or receivers, they were forced to pay the full rate of exchange on the total through charges. The Board sought a solution to the problem which, in effect, would practically amount to paying the Canadian portion in Canadian funds, resulting in Arrangement No. 1. The object and the result of this arrangement was to grant a considerable measure of relief to the Canadian shippers and receivers of international traffic, irrespective of what the legal rights of the carriers might be. This is a very brief summary; the judgments, to which reference has above been made, deal very fully with the question.

For sometime prior to Arrangement No. 2 becoming effective, United States funds were at a discount in Canada and, for the reasons set out in the judgment of October 24, 1934, *supra,* the regulations therein set out were prescribed to meet that situation.

Objection was taken by complainant to the provision in Arrangement No. 2 that, when any charges are paid in the United States, a surcharge thereon equivalent to 40 per cent of the rate of exchange shall be collected in Canadian funds in Canada, whereas, under Arrangement No. 1, when the charges are paid in the United States, no discount is allowed Canadian shippers. With respect to shipments billed forward with charges to collect when United States funds are at a premium in Canada, complainant alleged that the Canadian railways obtained considerable monetary benefit in their settlement with the United States lines in United States funds and no allowance, or discount, made to the Canadian shippers.

It was not altogether clear from the earlier written submissions of complainant whether what was applied for was the elimination of the 40 per cent surcharge provision in Arrangement No. 2, or the addition of a discount provision in Arrangement No. 1 when charges are collected in the United States. This, however, was cleared up by complainant's final submission at sittings of the Board in Vancouver on July 16 last, wherein it is set out that what is being asked is that " the Board instruct the transportation companies to amend part 1 (Arrangement No. 1) of tariff 16-D, bringing it in line with the same reasonable equitable plan as provided under part 2 (Arrangement No. 2)."

Careful consideration of the condition existing when the exchange situation brings Arrangement No. 2 into operation makes clear, in my opinion, the necessity for the surcharge as well as the discount provision. When payment of

charges is made in Canada, a discount, equivalent to 60 per cent of the rate of exchange, is made, but, if the arrangement stopped there, the Canadian railways having no control over the payment of charges in the United States, it is quite conceivable that the provision could be largely nullified by arrangements being made to pay practically all the charges on such international shipments within the United States. By doing so, the Canadian railways would be paid by the United States lines in depreciated United States currency and suffer considerable loss and, in those cases where the charges are borne by the Canadian shippers or receivers, they would obtain the benefit of 100 per cent of the rate of exchange on the total freight charges, which would be their incentive to endeavour to effect such an arrangement. It was clearly developed before the Board in 1920 that, with a few exceptions, prior to the exchange situation becoming abnormal, all the shippers had been in the habit of forwarding shipments to the United States with charges to be collected at destination, but changed their method of doing business simply because, by prepaying, they could make the exchange on the freight as an additional profit. It is evident that shippers were again changing their practice as a result of the exchange situation when United States funds are at a discount in Canada, as, in letter of the Railway Association of Canada, quoted in judgment dated October 24, 1934, *supra,* it was stated:—

> "Shippers and receivers of freight who formerly paid charges in Canada in Canadian funds are to an ever-increasing extent paying such charges in the United States in United States funds in order to gain advantage of the exchange situation, with the result that the Canadian railways in accepting United States funds from United States carriers in settlement of traffic balances, which they are forced to do in consequence of a practice of many years' standing, are being deprived of their proper revenues to the undue advantage of those persons who arrange for the payment of through charges in the United States."

It seems unnecessary to discuss Arrangement No. 2 further, because, in complainant's final submission, above quoted, it refers to it as a "reasonable equitable plan." It may be also pointed out that, prior to its prescription by the Board, Arrangement No. 2 was submitted to a considerable number of parties who had communicated with the Board concerning the exchange situation and there was no objection taken by any of them to the principle of the said regulations.

The issue is whether Arrangement No. 1 should have a discount provision when the charges are paid in the United States. There is a fundamental difference in the two arrangements so far as they concern the Canadian railways. While, under Arrangement No. 2, the surcharge provision is necessary to complete it and afford the Canadian railways an admittedly reasonable protection against an adverse exchange situation, the discount provision is not required under Arrangement No. 1 to accomplish this purpose.

The Railway Association of Canada contends that the regulations covered by Arrangement No. 1 never contemplated the allowance of any discount when charges are paid in the United States; that this was quite unnecessary, as shippers and receivers were given the opportunity of paying, in Canada, the charges on such traffic, in both directions, plus the surcharge; that no serious inconvenience is experienced under such an arrangement, as is clearly shown by the fact that shippers did readily arrange to change their practice with respect to the payment of charges when it was to their advantage to do so, as already referred to herein.

What seems to me to be significant is, first, that, prior to its prescription, the provisions of Arrangement No. 1 were discussed at conferences which the Board held with representatives of important boards of trade and trade organ-

izations generally and were accepted by them without any discount provision when charges are paid in the United States, and, second, Arrangement No. 1 was in force for fourteen years without any complaint concerning the point now raised; this point was only brought up after the publication of Arrangement No. 2, which contained both a surcharge and a discount provision, and the reason for the two provisions under this arrangement has already been dealt with herein.

Complainant alleges that, in many instances, trade practices do not permit payment of charges in Canada. Statements were filed by complainant showing a large number of lumber and shingle shipments forwarded to United States points with charges to collect. Mr. Flavelle, appearing on behalf of the British Columbia Lumber and Shingle Manufacturers Association, stated (page 2360):—

> "A great many of our customers in the United States have protested against the practice of prepaying freight, that is the wholesale customers. A great deal of the lumber and shingle business is done with wholesalers in Seattle, Portland, and other points in the United States, who object to having added the risk of carrying their customers on freight shipments. Freight shipments go forward collect and the customer on arrival has to pay freight."

He further stated (page 2361):—

> "We did not feel that we were hurt very badly, because we were getting the same freight rate and the same delivery rate as our American competitors were getting, and if the railway companies got the benefit of the premium on the exchange on their freight it was only what we were getting on the invoice price of our goods."

He also stated that when the Canadian railways, having had ten years of premium on collect shipments, recently commenced assessing a surcharge on collect shipments to the United States when United States funds are at a discount in Canada, they felt that they were entitled to ask for the premium on any future collect shipments when United States funds are at a premium in Canada. It was also stated that the financial condition of certain shippers in British Columbia would not permit them to prepay the charges and carry them until collection could be made from their customers.

In this connection, the Railway Association of Canada stated:—

> "Where charges are billed to be collected at destination the railways carry the financial burden and responsibility and Mr. Flavelle's argument apparently is that the railways should not only do this willingly, notwithstanding the fact that they have the legal right in all cases to demand prepayment, but having financed the cost of transportation and assumed the responsibility of securing freight charges at ultimate destination, they should, in addition, pay to the shipper any premium that might result from the collection of charges in United States funds from consignees. We can only say that such an argument appeals to us as being unfair and unreasonable."

The instances cited at the Vancouver hearing appear to be confined to traffic where the freight charges are borne by the United States receiver and not by the Canadian shipper. It is not apparent that the Canadian lumber and shingle shippers suffer any loss by the payment of freight charges in the United States when the funds of that country are at a premium; the charges are paid by the consignees. Where the freight charges on such traffic are actually borne by the Canadian shipper or receiver, we have not yet been shown that the payment of charges in Canada, under Arrangement No. 1, presents any difficulties.

Complainant alleged that the Canadian railways had obtained considerable monetary benefit on collect shipments under Arrangement No. 1. The Railway Association of Canada, in reply, stated it could not be said that, on an average and over a period of time, the Canadian railways either gained or lost by the application of the provisions of this arrangement. Complainant then stated that it was not reasonable to accept such a statement without complete supporting figures, which should be supplied by the railways. The Railway Association advised that there was no way to determine to what extent such charges are paid in United States funds without examining every account covering international freight shipments during the periods when surcharge was being assessed. The difficulty in obtaining an exact dollars and cents picture of the situation is obvious and, in any event, I do not see that this is material, because the whole arrangement was a matter of averaging, as pointed out in the judgment of January 13, 1921, *supra*. It is there shown that some Canadian railways would only receive a surcharge of 60 per cent, while their figures showed their proportions as ranging from 66 to 75 per cent, so that they would suffer losses under the general average fixed. The Board has obtained certain data from time to time. For the months of April, July, September, and November, 1921, for the amount of United States carriers' charges collected in Canada, the results were as follows in the case of the railways indicated:—

	COLUMNS NUMBERS				
	1	2	3	4	
Railway	U.S. Carriers Charges Collected in Canada	Cost of Settlement at Average Current Rate of Exchange	Total Surcharge Collected	Shortage or Excess—Difference between Columns Nos. 2 and 3 Shortage	Excess
C.N.R.	$1,590,574.47	$ 193,457.69	$ 231,810.15	.....	$38,352.46
C.P.R.	3.373.954.91	401,382.64	390,146.06	$11,236.58	
G.T.R.	3,549,258.68	432.214.48	361,183.99	71,030.49	
T.H.& B.	177,493.46	21,814.68	16,291.67	5,523.01	
Nap. Jct.	417.53	46.13	32.44	13.69	
Q.M.& S.	1.300.07	166.51	146.83	19.68	
T.& N.O.	10.047.60	1,296.76	2,559.95	.....	1,263.19
Que. Central	136,930.70	15,816.82	12,189.32	3,627.50	
Wabash	64,170.99	8,167.93	6,491.12	1,676.81	
A.C.& H.B.	3.18	.44	47.77	.....	47.33
Maine Central	2,471.51	276.49	222.74	53.75	
	$8,906,623.10	$1,074.640.57	$1,021,122.04	$53,518.53	

For the six months period from October 1, 1931, to March 31, 1932, the amount collected in surcharge by the Canadian Pacific and Canadian National Railways showed very little difference from the amount of the cost of funds in making settlement with United States carriers for charges collected in Canada on international shipments. For the year 1931 and the first three months of 1932, the Quebec Central Railway collected surcharge of $12,338.59 and the cost of exchange in making settlement with United States carriers was $15,196.58. The Toronto, Hamilton and Buffalo Railway, for period October 1, 1931, to March 31, 1932, collected surcharge amounting to $22,280.14 and the cost of exchange was $25,479.26; for the same period, the Great Northern Railway lines in Canada collected in surcharge $23,056.44 and the cost of exchange was $42,072.38; for the same period, the Midland Railway Company of Manitoba collected surcharge of $24,070.04 and the cost of exchange was $42,885.92. It may be also pointed out that, when the exchange rate is less than seven-eighths of 1 per cent, no surcharge is assessed, although the Canadian railways have to absorb the losses resulting from the acceptance of charges in Canadian funds and payment to the United States lines of their proportions in United States funds. There have been long periods of time when United States

funds have been at a premium, but less than seven-eighths of 1 per cent, and no surcharge assessed, although substantial amounts paid during such periods by the Canadian railways covering exchange in settlement with United States lines.

Again, in arriving at the surcharge, the rate of exchange quoted for New York funds by the Bank of Montreal, at noon in Montreal on the last day of each month, governs from the first to the fourteenth, inclusive, of the following month; similarly, such quotation at noon on the fourteenth governs from the fifteenth to the last day of such month. Rates of exchange have fluctuated considerably at times between the dates so fixed, sometimes against and sometimes in favour of the shippers or carriers, as the case may be.

Further, in determining the surcharge, when the rate of exchange is higher than 1 per cent, fractions of less than one-half are disregarded and fractions of one-half or over counted as 1 per cent. Thus, when the rate of exchange is 2½ per cent, the surcharge, based on 60 per cent, would be 1½ per cent, but 2 per cent is charged under the rule above quoted; when the rate of exchange is 4½ per cent, the surcharge based on 60 per cent, is 2·70 per cent and 3 per cent is charged. On the other hand, when the rate of exchange is 2¼ per cent, the surcharge, based on 60 per cent, is 1·35 per cent, but only 1 per cent is charged; if the rate of exchange is 4 per cent, the surcharge is 2·40 per cent, but 2 per cent is charged.

After carefully considering all that has been submitted, I do not consider that it has been shown that there is any necessity, or justification, for the Board directing a change in the provisions of Arrangement No. 1 and the complaint should be dismissed.

Ottawa, Ont., November 15, 1935.

Commissioners Norris and Stone concurred.

ORDER No. 52483

In the matter of the complaint of the Vancouver Board of Trade concerning surcharge regulations governing when United States funds are at a discount, or at a premium, in Canada.

File No. 29674.68

Friday, the 22nd day of November, A.D. 1935.

Hon. Hugh Guthrie, K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*
Hon. T. C. Norris, *Commissioner.*
G. A. Stone, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Vancouver, British Columbia, July 16, 1935, in the presence of counsel for and representatives of the Vancouver Board of Trade, the Canadian Pacific Railway Company, and the Canadian National Railways, and what was alleged; and upon reading the further written submissions filed,—

It is ordered: That the complaint be, and it is hereby, dismissed.

H. GUTHRIE,
Chief Commissioner.

Application of the Canadian National Railways for an Order granting leave to abandon the operation of that portion of its Iberville Subdivision, in the Province of Quebec, between Noyan Junction (M. 0·0) and Iberville (M. 21·9)—a distance of 21·9 miles.

File No. 39310.11

Heard at St. Johns, P.Q., May 13, 1935.

JUDGMENT

GARCEAU, F. N., DEPUTY CHIEF COMMISSIONER:

The Canadian National Railways Company, by its application of the 18th January, 1935, under Section 165-A of the Railway Act, asks for leave to abandon the operation of a portion of the Iberville Subdivision, in the province of Quebec, located between Noyan Junction (M. 0·0) and Iberville (M. 21·9), a distance of 21·9 miles.

The history of that line filed by the company reads as follows:—

> "Opened for operation—1896.
>
> "Built under the Charter of—The East Richelieu Railway Co. under the following Statutory Authority: Province of Quebec, Act 54 V, Chap. 91 of 1890.
>
> "In 1895 the United Counties Railway Co. was empowered to purchase the East Richelieu Valley Railway.
>
> "In 1900 the Quebec Southern Railway Co. was incorporated under Canada Act 63-64 V, Chap. 76 to operate the United Counties Railway. After a receivership the property was purchased by the Delaware and Hudson Railway Co. and transferred to a newly formed Canadian subsidiary, the Quebec, Montreal and Southern Railway Co. The Canadian National Railway Co. purchased the Quebec, Montreal and Southern Railway by authority of Act 19-20 Geo. V, Chap. 15 of Canada, in 1929."

In support of its application, the company submits that there has been no train service and no maintenance done on the line since April 26, 1931; that, during the year 1930, the gross earnings were $27,389 out of which the company received a total revenue of $20,187; the operating expenses are stated to be $39,063, leaving a direct loss from operation of $18,876.

Mr. Rand further pointed out that the cost of putting the line into condition for normal service would amount to $80,000.

At the time of the construction of this line of railway, the provincial government gave land and money subsidies amounting to $116,340. These were given not only to help in the construction of the railway, but mostly to insure its continuous operation.

Mr. Maxime Morin, on behalf of the Government of the province of Quebec, represented that the Company received from the provincial Government the $116,340 above mentioned to aid in the construction of the line that it operated by virtue of a contract sanctioned by Act, 51 Victoria. He stated:—

> "This contract has not been broken by the Government of Quebec. One party, the Government, has paid the money; the other party, the railway company, wishes to escape from its obligations, and I contend that it cannot do so without the consent of the other party. It is a contract which binds both parties. But the Government of the province of Quebec does not consent, and in case your Commission comes to the conclusion that the application should be granted, the Government of Quebec cannot consent unless the rights of the province are reserved."

The Municipal Corporations of the Parish of St. Thomas de Noyan, of the Parish of St. Georges de Clarenceville, of the Village of Clarenceville, of St. Sebastien, of the Parish of St. Georges de Henryville, of the Village of St. Georges de Henryville, and the Municipal Corporation of the Parish of Ste. Anne de Sabrevois, through their solicitors, Hibbard and Gosselin, submitted that the discontinuation of railway service has resulted in considerable prejudice and detriment to the population, trades, industries, business and farming interests located in these municipalities. It is also pointed out that, "in particular, the Municipal Corporation of the Parish of St. Georges de Henryville paid a bonus of $4,500 in respect of the construction of the said railway, with the implied understanding it would ever be operated," and it is urged that the line be again put into operation in order that the interests of the population, trades, industries, business and farms may enjoy the advantages of a regular railway service, of which there is urgent need.

The Canadian National Railways, by a declaration attached to their application, specifically outline the bearing of this application. The point at issue is not only to discontinue the operation of their line, but to abandon it, to remove the rails, ties, and so forth.

We have no information as to the results of operation prior to 1929. It is true that the company has stated that there was a deficit of $18,876 during the last year so far as the Canadian National Railways are concerned, but it would in reality be of only $11,000 for the reason that the operation of their line during that year brought in a total revenue of $27,389, while the expenditures were of $39,763.

At the time of the abandonment of operation, the public was patronizing the railway and was paying to it an annual sum of $27,389.

Has the company's policy been in the interest of the public and of the railway itself?

The abandonment of operations has certainly compelled the public to look for some other means of transportation, which have been proven inadequate—(see Evidence, Messrs. Gosselin, Gregoire, Derick, Lamoureux and Miller).

Mr. Gosselin contended that, had the railway revised its tariff or rather had it continued its rate of 19½ cents per 100 pounds to Montreal instead of raising it to 22½ cents, its line would have been patronized more.

There is no doubt that the company—in that respect in harmony with the ideas prevailing at the time—did not attempt to react against the depression or motor vehicle competition. It preferred to sacrifice, temporarily at least, the assets that that line comprised and, now, it asks the Board to sanction the abandonment effected in 1931.

It was shown that the Municipality of Noyan and that of Clarenceville, in the winter time had no other transportation facilities to substitute for the railway. The other parishes, however, are served by a provincial highway tnat is kept in good condition for motor traffic.

The transportation problem in Canada was studied by the Royal Commission 1931-32; the necessity of the railways being maintained and of a control of highway carriers was insisted upon. Paragraph 43 of the Report, at p. 102, reads thus:—

> "Relief to the railways from the inroads being made by trucks into freight earnings will come by restriction and regulation of truck traffic as distinct from taxation, and by some form of co-ordination with rail traffic."

Paragraph 46, p. 103, says:—

> ". . . . . there is a growing realization that conditions of operation must be equalized as far as possible between the railway and the truck. *The truck cannot replace the railway* and it must not be allowed to completely strangle its competitor and leave the country without an essential transport service."

I would also refer to paragraph 49, p. 103; paragraphs 55, 56 and 57, p. 104; paragraph 63, p. 105.

As railways are essential, it is urgent that the transport by trucks, busses or water, be controlled in exactly the same manner and by the same authority as the transport by rail, so that, instead of competing ruinously with each other, the various means of transportation would complement one another and furnish the public with transportation facilities at the lowest possible prices.

The plight of the railways is uncontrolled competition by other public carriers, motor vehicles, etc.

Mr. Rand, counsel for the Canadian National Railways, stated: (Evidence, p. 650)

> "I would say that competition is the cause of our poor service, not only that, but the cause of the cessation of our service."

I would also refer to the dictum of Mr. B. T. Chappell, General Superintendent of the Canadian National Railways, at Vancouver: (See *Ottawa Citizen*, Sept. 3, 1935)

> "There are those who think the railways are backward in failing to go into the truck business, but the railway company, no matter how efficiently it operated trucks, would lose money competing against operators ignorant of costs and rates. In the meantime, the trucks are using the highways practically free of charge as compared with the railway's enormous investments in right of way, all of which is taxed.
>
> "The people of Canada intent upon getting transportation at the cheapest cost, do not realize the effect of unfair truck competition upon the railway industry, which is not only a basic necessity, but with which they are deeply concerned because of their investments in both the publicly-owned and the privately-owned systems."

Mr. T. E. McDonnell, of Toronto, President and General Manager, Canadian Pacific Express, said at Quebec before the Kiwanis Club on the 17th of October, 1935:—

> "Railways were produced on their own rights of way and are maintained and operated for the sole purpose of commercial transportation. Highways were not built for commercial transportation, but having been built for another purpose, their use is permitted under varying conditions in different provinces.
>
> "Their use for commercial transportation is of the nature of a by-product and it is suggested that to the extent this by-product threatens the commercial life of the country, *it must be controlled, not in the interest of the railways, but in the interest of Canada.*"

Mr. McDonnell stressed the fact that when control and co-ordination are accomplished, it will be done not to help the railways but to protect the people of Canada who must use the railways.

> ". . . . . Canada is entitled to have a complete transportation system made up of all proven methods, so co-ordinated that each method will function in that sphere in which it is most efficient and economical."

Mr. McDonnell defined "transportation" as the commercial movement of people and their goods from where they are to where they want to be.

The control of transportation agencies is also urged by the automotive industry. On the 12th September last, Mr. J. B. Baillargeon, of Montreal, President of the Automotive Transportation Association of Quebec insisted on the necessity of regulation of highway carriers.

Mr. W. L. Best, Vice-President and National Representative of the Brotherhood of Locomotive Firemen and Enginemen, in his memorandum of January 20, 1933, developed that same proposition.

The above quotations and the evidence given by various witnesses heard by the Board at sittings held at St. Johns, Farnham, Montreal, Victoriaville, Nicolet, Mansonville and elsewhere, show that public opinion acknowledges the necessity of a unique control over transportation agencies by rail or highway.

. . . . . .

"The truck cannot replace the railway" says the report of the Royal Commission above quoted. Experience has proven the truth of this dictum.

"Excepting for local carriage in terminal areas, railroad service is not only faster but cheaper than highway transport" asserts the report of experts after two years of study of all forms of transportation. (See *Labor,* Washington, D.C., July 18, 1935.)

Can the Board, in view of these findings allow the dismantling of a railway line which crosses a fertile, agricultural area having a thriving population of more than 5,000, leaving it to the whims of uncontrolled carriers?

. . . . . .

Even if trucks could be satisfactorily substituted to the railway, it would be against public weal to consent to an abandonment of a line in the actual circumstances, until such motor carriers have become *real public carriers,* under as efficient a control as that to which the railways are subject.

The Board, the authority constituted by Parliament to safeguard to the public a system of transportation, ought not by a decision to expose a section of the country to be deprived entirely of transportation facilities, at the option of the carrier, or to be charged prohibitive prices.

. . . . . .

The Interstate Commerce Commission, in the United States, relying on the services provided by motor vehicles to serve the community, two years ago allowed the abandonment of a fifty-mile branch line between Sioux City and Wynot in Nebraska. The tracks disappeared; railway employees were separated from their jobs; and now, the *Grain and Feed Review* summarizes the economic results, as follows:—

> "First of all, the grain rate by rail to Sioux City and the East was 3 cents per hundred from the farthest point on the line. Now the rate is 10 cents a bushel to Sioux City. Coal was laid down in the farthest town for 20 cents a ton, while at present truckers are offering to deliver coal to close-in points at $2 a ton.
>
> "Farm values have depreciated from 50 to 75 per cent . . . ." (See *Labor,* Washington, D.C., November 12, 1935).

. . . . . .

It is true that this line was not operated during the last four years but the motor vehicle operators knew that the line was not abandoned and that the communities affected were asking that the railway resume its operations.

If to-morrow this line were dismantled, the inhabitants of this region might face the experience of the Nebraska people.

It is all very well to say that motor transportation is a substitute to the railways but we must not forget that this substitute can cease to exist on the morrow; and the Board, being the authority constituted by Parliament to see that the proper service is given to trade and commerce, cannot expose the public to be deprived of means of transportation or to be charged exorbitant prices by the remaining carriers.

I would add that, even if the public could rely on the actual motor vehicle service, it is unfit for most of the commodities to be carried, on account of climatic conditions.

This is an agricultural part of the country. Its products are mainly fruits, milk, vegetables, meat, poultry and eggs. It is a mixed farming country. Any

of these products, carried to Montreal by trucks are exposed to freeze, to become damaged if not valueless. It would be different if they were grains or other products, immune to low temperatures.

. . . . . .

The last census shows that Noyan has a population of 561 and Clarenceville (parish and village) a population of 866. (Noyan in the census of 1931 is known as St. Thomas de Foucault).

If the municipalities served by Route No. 7 have the advantage of using the truck and bus services, the 1,300 inhabitants of Clarenceville and Noyan have not, and they are precluded from using the railway on the other side of the river, owing to the high toll charged on the bridge—one dollar—and they are ten miles distant from Highway No. 7.

. . . . . .

This line formerly used by trains running from Montreal to points in the United States was six miles shorter than the one actually used by the railway, on the other side of the river. No doubt the railway had certain reasons for using this other line but these reasons in the very near future might cease to exist, when rapid transit is considered uppermost, and then the railway and the public will be glad to use the road now asked to be abandoned.

. . . . . .

Shippers are ready to discard trucks. Mr. Grégoire, since the discontinuance of railway service, has bought two trucks, sometimes he hires others; but, he would sell them if the railway would charge the rates existing before November 1, 1931—see Evidence, p. 641:—

> "Q. You have bought trucks?—A. Yes.
>
> "Q. If the railway came back to its old rate, would you ship by the railway?—A. That depends on whether they give me the rate of 19½ cents. (This was the rate he had prior to November, 1931). We ship to Iberville, to Montreal, for 4 cents per 100 pounds less.

Mr. Miller, mayor of Noyan, says:—

> "I can remember when there was a prosperous railroad, when there was a man trucking every day from Clarenceville to the village, made his living out of it. . . .
>
> These people have now learned a lesson and if that railroad comes again, they are going to patronize it, 80 to 90 per cent more than they did. . . ."

. . . . . .

Subsidies to the extent of $120,000 were paid by the Provincial Government and two municipalities for the construction of this line and for a specific daily service; but this railway was sold on the 4th January, 1907, under the authority of the Exchequer Court of Canada . . . "the said sale to have the same effect as a sheriff's sale of immoveables under the laws of the province of Quebec, and the buyer to have under such sale a clear title free from hypothecs, privileges and incumbrances whatever . . ." The laws of the province of Quebec in this connection are C.C. 2081, Ss. (6), C.P. 781.

When the Canadian National Railways bought the line in 1929 they were not bound towards the public to any contractual obligations, at least in so far as it appears from the file.

However, the fact that subsidies were paid indicates that the line was considered useful and essential to the public.

. . . . . .

Relief to the railways' difficulties lies not with the Board but with the Parliament of Canada. The co-ordination of all carriers so as to constitute a national transportation system, all agencies competing one another, would be a work for the general advantage of Canada.

. . . . . .

I would dismiss the application.

November 14, 1935.

Application of the Canadian National Railways for an Order granting leave to abandon the operation of that portion of its Iberville Subdivision, in the Province of Quebec, between Noyan Junction (M. 0·0) and Iberville (M. 21·9)—a distance of 21·9 miles.

File 39310.11

JUDGMENT

STONE, COMMISSIONER:

This application applies to the southern end segment of line of the former Quebec, Montreal and Southern Railway Company, and was at one time a continuation of two branches, i.e. Noyan Junction to Iberville, 21·9 miles, and from Iberville to St. Hyacinthe Junction, 31·3 miles, a total distance of 53·2 miles.

By sanction of the Board all service was discontinued on the Noyan Junction to Iberville section effective April 21, 1931, and between Iberville and St. Hyacinthe Junction in November, 1931.

At the hearing held in St. Hyacinthe on May 15, 1935, judgment was rendered granting the application of the Railway to abandon the line between St. Hyacinthe and Iberville, "Every right to be preserved and protected; not interfered with by the order." (Page 759, Vol. 621.)

I find myself in disagreement with the conclusions reached by the Deputy Chief Commissioner in his judgment in this case. I agree that motor trucks have many advantages over the railway for short haul traffic, and this feature has a very important bearing on the case in question.

There are no industries of magnitude dependent on this line. The territory is served at the majority of places affected by a regular established bus service operating between Montreal and Boston, and a local bus service between Montreal and the district. Noyan is approximately one mile from Cantic station, and Iberville is adjacent to the main line of the Montreal and Portland district of the Canadian National Railways.

Mr. Grégoire contended he could ship cheaper by truck, and that by this method his business had not suffered. Questioned by the Deputy Chief Commissioner in connection with trucks he was operating, he stated as follows:—

> "Q. Does it cost you more with your trucks?—A. It is 10 cents less.
>
> "Q. In winter what do you do?—A. The roads are open as far as Henryville."

Questioned by Mr. Darveau:—

> "Q. It is only for shipments during the summer?—A. Winter also, *there is never enough snow to block it.*" (Page 642, Vol. 621.)

The winters in the territory where this line is located, are no more severe, or snow conditions greater, than in many sections of other provinces in the Dominion of Canada. The evidence shows that buses and trucks can be and are operated there all winter.

Competitive bus and truck service is more frequently found in centres where the population is greater than in more remote districts. This condition is primarily due to the improved highway conditions, and the substantial business available.

For 1930 there was shown a loss in operation of $18,876, plus costs for deferred maintenance, and to rehabilitate this abandoned line again for service would cost $80,000.

Certain material on this line is deteriorating, some of which might be of more value if salvaged now than later.

The public generally are interested in economical operation of the Government-owned railways, and the main consideration for the Board is whether

public interest justifies continuation or abandonment of this line where service has been discontinued for over four years. The business offering locally along the line does not appear to warrant its reopening again for service.

The question was raised by counsel for the provincial Government and the municipalities involved as to subsidies given for the construction of this railway. The payment of subsidies, while one of the elements bearing upon the decision in applications of the kind and therefore to be taken into consideration, is not controlling or binding upon the Board.

There seems no reasonable ground for further delaying action, and, having regard to all the circumstances of this case, I would grant the application, without prejudice to whatever rights or remedies may be open to the parties in the courts.

November 22, 1935.

Commissioner Norris concurred.

Requête de la compagnie des chemins de fer Nationaux du Canada, demandant qu'une ordonnance soit rendue l'autorisant à discontinuer l'exploitation de la partie de sa ligne sur sa subdivision d'Iberville, dans la province de Québec, qui s'étend de la Jonction de Noyan (mille 0.0) à Iberville (mille 21·9) soit un parcours de 21·9 milles:

Dossier No. 39310·11

Entendue à St-Jean, P.Q., le 13 mai 1935.

JUGEMENT

Garceau, F. N., Commissaire en chef suppléant:

La compagnie des chemins de fer Nationaux du Canada, par sa requête du 18 janvier 1935, demande en vertu de l'article 165-(*a*) de la Loi des chemins de fer, l'autorisation de cesser l'exploitation d'une partie de sa ligne sur sa subdivision d'Iberville, dans la province de Québec, située de la jonction de Noyan (mille 0·0) à Iberville (mille 21·9), soit un parcours de 21·9 milles.

L'historique de cette ligne déposé par la compagnie se lit comme suit:

> " Cette ligne a été ouverte et mise en exploitation en 1896; construite en vertu de la charte accordée à la East Richelieu Railway Co., aux termes de l'article 54 Vic., chap. 91, des Statuts Revisés de la Province de Québec de 1890.
>
> " En 1895, la compagnie du chemin de fer des Comtés Unis fut autorisée à faire l'acquisition du chemin de fer East Richelieu Valle- En 1900, la compagnie Quebec Southern Railway fut incorporée en vertu de la Loi du Canada 63-64 Vic., chap. 76 pour exploiter le chemin de fer des Comtés Unis. A la suite d'une mise en faillite, la compagnie du chemin de fer Delaware and Hudson fit l'acquisition de ce chemin de fer et le transféra à une compagnie canadienne subsidiaire nouvellement constituée, savoir: la compagnie Quebec, Montreal & Southern Railway. La compagnie des chemins de fer Nationaux acheta le Quebec, Montreal & Southern Railway en 1929 aux termes du Statut 19-20 Geo. V, chap. 15 du Canada."

A l'appui de sa requête la compagnie soumet que les trains n'ont pas circulé sur cette ligne et qu'elle n'a pas été entretenue depuis le 26 avril 1931; durant l'année 1930, les recettes brutes se sont élevées à la somme de $27,389 à même laquelle la compagnie a réalisé un revenu total de $20,187; on dit que les dépenses d'exploitation ont été de $39,063, laissant une perte nette dans les frais d'exploitation de $18,876.

Monsieur Rand fait aussi remarquer que pour remettre cette ligne abandonnée en bon état d'exploitation, il en coûterait la somme de $80,000.

. . . . . .

A l'époque de la construction de cette ligne, le gouvernement de la province contribua pour un montant de $116,340, en terres et en argent. Ces subsides ont été octroyés non seulement pour aider à la construction du chemin de fer, mais surtout pour garantir la continuation de son exploitation.

Monsieur Maxime Morin, au nom du gouvernement de Québec, représenta que la compagnie avait reçu du gouvernement provincial la somme de $116,340 plus haut mentionnée, pour l'aider à construire cette ligne de chemin de fer qu'elle exploita en vertu d'un contrat sanctionné par le Statut 51 Victoria. Il s'exprima ainsi:—

> "Ce contrat n'a pas été annulé par le gouvernement de Québec. Une partie au contrat, savoir, le gouvernement, a payé cet argent; l'autre partie, la compagnie du chemin de fer, veut renoncer à ses obligations, et je prétends qu'elle ne peut pas le faire sans le consentement de l'autre partie. C'est un contrat qui lie les deux parties en cause. Mais le gouvernement de la Province de Québec ne consent pas, et advenant que la Commission en viendrait à la conclusion que la requête devrait être accordée, le gouvernement de Québec ne peut y consentir à moins que les droits de la Province soient sauvegardés."

Les corporations municipales des paroisses de St-Thomas de Noyan, de St-Georges de Clarenceville, du village de Clarenceville, de St-Sebastien, de la paroisse de St-Georges de Henryville, du village de St-Georges de Henryville, ainsi que la corporation municipale de la paroisse de Sabrevois, par leurs avocats, MM. Hibbard et Gosselin, ont représenté que la discontinuation du service des trains avait causé un tort considérable à la population, au commerce, à l'industrie, aux intérêts financiers et agricoles de ces municipalités. On a aussi fait observer tout particulièrement que la corporation municipale de la paroisse de St-Georges de Henryville avait payé un bonus de $4,500 pour la construction de cette ligne, avec l'entente implicite qu'elle serait toujours exploitée, et elle demandait de remettre cette ligne en exploitation pour que la population, le commerce, l'industrie et les intérêts financiers et agricoles puissent bénéficier des avantages d'un service de trains réguliers dont ils ont grandement besoin.

. . . . . .

La compagnie des chemins de fer Nationaux du Canada, par une déclaration annexée à sa requête, fait voir spécifiquement la portée de sa demande. Le point en litige n'est pas seulement de savoir si on doit discontinuer l'exploitation de cette ligne, mais si on doit l'abandonner et enlever les rails, dormants, etc.

Nous n'avons pas de renseignements sur les résultats de l'exploitation de cette ligne avant 1929. Il est vrai que la compagnie a déclaré qu'elle avait eu un déficit de $18,876 au cours de la dernière année d'exploitation, mais ce déficit ne serait en réalité que de $11,000 pour la raison que l'exploitation de cette ligne durant cette année-là a rapporté un revenu total de $27,389, alors que les dépenses ont été de $39,763.

A l'époque de la discontinuation d'exploitation, le public accordait son patronage au chemin de fer et lui avait payé durant l'année la somme de $27,389.

La ligne de conduite de la compagnie a-t-elle été dans l'intérêt du public et du chemin de fer lui-même?

Il est certain que la discontinuation des opérations a obligé le public à se procurer d'autres moyens de transport, lesquels ont été jugés insuffisants—(Voir preuve, témoignages de MM. Gosselin, Grégoire, Dérick, Lamoureux et Miller.)

Monsieur Gosselin a prétendu que si la compagnie du chemin de fer avait modifié son tarif, ou plutöt si elle avait continué d'appliquer son tarif de 19½ cents les 100 livres jusqu'à Montréal, au lieu de le hausser à 22½ cents, le public aurait plus encouragé sa ligne.

Il n'y a pas de doute que la compagnie—d'accord sur ce point avec les idées qui prévalaient dans le temps—n'a pas essayé de réagir contre la dépression ou

la concurrence des véhicules-moteurs. Elle a préféré sacrifier, temporairement du moins, l'actif que comprenait cette ligne et elle demande maintenant à la Commission de sanctionner l'abandon effectué en 1931.

On a démontré que les municipalités de Noyan et de Clarenceville n'avaient pas en hiver d'autres moyens de transport pour remplacer le chemin de fer. Les autres paroisses, cependant, sont desservies par une route provinciale qui est tenue en bonne condition pour la circulation des véhicules-moteurs.

. . . . . .

Le problème du transport en Canada a fait l'objet d'une enquête par une Commission Royale en 1931-32. On a insisté sur la nécessité du maintien des chemins de fer et du contrôle des transports routiers. Le paragraphe 43 du rapport, à la page 102, se lit comme suit:

> " Relief to the railways from the inroads being made by trucks into freight earnings will come by restriction and regulation of truck traffic as distinct from taxation, and by some form of co-ordination with rail traffic."

Le paragraphe 46, p. 103, dit:—

> ". . . there is a growing realization that conditions of operation must be equalized as far as possible between the railway and the truck. *The truck cannot replace the railway* and it must not be allowed to completely strangle its competitor and leave the country without an essential transport service."

Je référerais aussi au paragraphe 49, p. 103; aux paragraphes 55, 56 et 57, page 104, et au paragraphe 63, page 105 dudit rapport.

Vu que les chemins de fer sont essentiels, il est d'urgence que le transport par camion, autobus, et par eau, soit contrôlé exactement de la même manière et par la même autorité que le transport par rail, de façon qu'au lieu de se faire une concurrence ruineuse, les divers moyens de transport se complèteraient et procureraient au public des facilités de transport à des prix les plus bas possibles.

. . . . . .

La situation désavantageuse des chemins de fer est due à la concurrence sans contrôle des autres voituriers publics, des véhicules-moteurs, etc.

Monsieur Rand, l'avocat de la compagnie des chemins de fer Nationaux, a déclaré: (Preuve, p. 650):

> " I would say that competition is the cause of our poor service, not only that, but the cause of the cessation of our service."

Je réfèrerais aussi à la déclaration de monsieur B.-T. Chappell, surintendant général des chemins de fer Nationaux, à Vancouver. (Voir le " Citizen " d'Ottawa, du 3 septembre 1935):

> " There are those who think the railways are backward in failing to go into the truck business, but the railway company, no matter how efficiently it operated trucks, would lose money competing against operators ignorant of costs and rates. In the meantime, the trucks are using the highways practically free of charge as compared with the railways' enormous investments in right-of-way, all of which is taxed.
>
> " The people of Canada intent upon getting transportation at the cheapest cost, do not realize the effect of unfair truck competition upon the railway industry, which is not only a basic necessity, but with which they are deeply concerned because of their investments in both the publicly-owned and the privately-owned systems."

Monsieur T.-E. McDonnell, de Toronto, président et gérant général de la compagnie Canadian Pacific Express, disait à Québec devant le Club Kiwanis, le 17 octobre 1935, ce qui suit:

> "Railways were produced on their own rights-of-way and are maintained and operated for the sole purpose of commercial transportation. Highways were not built for commercial transportation, but having been built for another purpose, their use is permitted under varying conditions in different provinces.
>
> "Their use for commercial transportation is of the nature of a by-product and it is suggested that to the extent this by-product threatens the commercial life of the country, it must be controlled, not in the interest of the railways, but in the interest of Canada."

M. McDonnell appuya sur le fait que lorsque le contrôle et la coordination seront exercés, ce sera non pas pour aider les chemins de fer mais pour protéger le peuple du Canada qui doit en faire usage.

> ". . . Canada is entitled to have a complete transportation system made up of all proven methods, so co-ordinated that each method will function in that sphere in which it is most efficient and economical."

M. McDonnell a défini le "transport" comme étant le déplacement commercial des individus et de leurs marchandises d'un endroit où se trouvent à un endroit où ils désirent se trouver.

Les voituriers qui font le commerce du transport-automobile insistent aussi sur le contrôle des moyens de transport. Le 12 septembre dernier, Monsieur J.-B. Baillargeon, de Montréal, président de l'Association du transport-automobile de Québec, insista sur la nécessité de la réglementation du transport routier.

Monsieur W. L. Best, vice-président et représentant national de la Fraternité des chauffeurs et mécaniciens de locomotives, développa la même proposition dans son mémoire du 20 janvier 1933.

Les citations ci-dessus et la preuve produite par divers témoins entendus par la Commission aux séances tenues à St.-Jean, Farnham, Montréal, Victoriaville, Nicolet, Mansonville et ailleurs, établissent que l'opinion publique reconnaît la nécessité d'un contrôle unique sur les voituriers ferroviaires ou routiers.

"Le camion ne peut pas remplacer le chemin de fer" dit le rapport de la Commission Royale ci-dessus mentionné. L'expérience a prouvé le bien-fondé de cette déclaration.

"Sauf pour le transport local dans les zones de terminus, le service ferroviaire est non seulement plus rapide mais moins dispendieux que le transport routier" affirme le rapport d'experts à la suite de deux ans d'étude de tous les moyens de transport—(Voir le "Labor" de Washington, D.C., du 13 juillet 1935).

En face de ces constatations la Commission peut-elle permettre l'enlèvement d'une ligne de chemin de fer qui traverse une région agricole fertile ayant une population entreprenante de plus de 5,000 habitants, la laissant à la merci de voituriers qui ne sont sous aucun contrôle?

. . . . . .

Même si le camion pouvait remplacer le chemin de fer d'une façon satisfaisante, ce serait au détriment du bien-être public que de consentir à l'abandonner dans les circonstances actuelles, avant que le transport-automobile devienne véritablement un moyen de transport public contrôlé aussi efficacement que l'est le transport par rail.

La Commission qui est l'autorité constituée par le Parlement du Canada pour sauvegarder dans l'intérêt du public un réseau de transport, ne doit pas

exposer une partie du pays à être privée entièrement de facilités de transport au choix du voiturier ou à ce faire imposer des tarifs prohibitifs.

. . . . . .

La Commission du Commerce Inter-Etats, des Etats-Unis, se fiant aux services fournis par les véhicules-moteurs pour desservir le public, décida il y a deux ans en faveur de l'abandon d'une ligne d'embranchement de cinquante milles entre la cité de Sioux et Wynot, dans le Nebraska. On enleva les rails, les employés furent privés de leur emploi; et maintenant, la "Grain and Feed Review" fait un résumé des résultats économiques comme suit:—

> "First of all, the grain rate by rail to Sioux City and the East was 3 cents per hundred from the farthest point on the line. Now the rate is 10 cents a bushel to Sioux City. Coal was laid down in the farthest town for 20 cents a ton, while at present truckers are offering to deliver coal to close-in points at $2 a ton.
>
> "Farm values have depreciated from 50 to 75 per cent. . . ." (Voir "Labor" Washington, D.C., 12 novembre 1935).

Il est vrai que cette ligne n'a pas été exploitée au cours des quatre dernières années, mais les propriétaires des véhicules-moteurs savaient que la ligne n'était pas abandonnée et que les localités affectées demandaient que le chemin de fer rétablît son service.

Si demain on enlevait cette ligne, les habitants de cette région pourraient subir le même sort que ceux du Nebraska.

On peut fort bien dire que le transport-automobile peut remplacer le chemin de fer, mais il ne faut pas oublier qu'il peut cesser d'exister du jour au lendemain; et la Commission qui est l'autorité constituée par le Parlement pour voir à ce qu'un service convenable soit fourni au commerce et à l'industrie, ne peut pas exposer le public à être privé de moyens de transport ou à se faire imposer des tarifs exorbitants par les autres voituriers.

J'ajouterais que, même si le public pouvait compter sur le service actuel des véhicules-moteurs, celui-ci serait encore inefficace pour le transport de la plupart des produits à cause des conditions du climat.

Il s'agit ici d'une région agricole du pays. Ses produits consistent principalement en fruits, lait, légumes, viande, volailles et oeufs; c'est une région de culture mixte. Tout produit qui est transporté à Montréal par camion est exposé à geler, à être endommagé, sinon à perdre toute sa valeur. Il en serait autrement si ces expéditions consistaient en grains ou autres produits qui ne sont pas affectés par la froide température.

. . . . . .

La population de Noyan, d'après le dernier recensement, est de 561 habitants, et celle de Clarenceville (paroisse et village) de 866. (Noyan est connu dans le Recensement de 1931 sous le nom de St-Thomas de Foucault.)

Si les municipalités desservies par la Route 7 ont l'avantage d'utiliser les services des camions et des autobus, les 1,300 habitants de Clarenceville et de Noyan ne l'ont pas, et ils sont empêchés de se servir du chemin de fer de l'autre côté de la rivière à cause du prix élevé qui leur est chargé sur le pont, savoir: $1, et ils sont à une distance de dix milles de la route N° 7.

Cette ligne sur laquelle circulaient autrefois les trains de Montréal dans la direction des Etats-Unis comprenait un parcours de six milles de moins que celle dont se sert le chemin de fer de l'autre côté de la rivière. Le chemin de fer sans doute avait des raisons pour se servir de cette autre ligne, mais ces raisons dans un avenir très rapproché pourraient cesser d'exister quand le transport rapide sera considéré comme indispensable, et alors le chemin de fer et le public seront bien aise d'utiliser la ligne de chemin de fer que l'on demande maintenant d'abandonner.

. . . . . .

Les expéditeurs sont prêts à mettre de côté les camions. M. Grégoire, depuis la discontinuation du service du chemin de fer, s'est acheté deux camions, et parfois il en loue d'autres; mais il les vendrait si le chemin de fer chargeait les tarifs qui existaient avant le 1er nomembre 1931—(Voir preuve, p. 641): (En français, p. 638):—

"Q. Vous avez acheté des trucks?—R. Oui.

"Q. Si le chemin de fer revenait à son ancien prix, expédieriez-vous par les chars?—R. Ça va dépendre si on veut me réduire à 19½ cents. Nous expédions d'Iberville à Montréal pour 4 cents du 100 livres de moins."

Monsieur Miller, maire de Noyan, dit:—

"I can remember when there was a prosperous railroad, when there was a man trucking every day from Clarenceville to the village, made his living out of it . . .

"These people have now learned a lesson and if that railroad comes again, they are going to patronize it, 80 to 90 per cent more than they did . . ."

. . . . . .

Des subsides au montant de $120,000 ont été octroyés par le gouvernement provincial et par deux municipalités pour aider à la construction de cette ligne et spécialement pour obtenir un service de trains quotidien; mais ce chemin de fer fut vendu le 4 janvier 1907 par autorité de la Cour d'Echiquier du Canada . . . "ladite vente devant avoir le même effet qu'une vente d'immeubles faite par le shérif en vertu des lois de la province de Québec, et l'acquéreur devant posséder aux termes de telle vente un titre libre de toutes hypothèques, privilèges, et de quelques autres charges . . ." Les lois de la Province de Québec sous ce rapport sont contenues dans le Code Civil, article 2081, paragraphe (6), et dans le Code de Procédure Civile, article 781.

Lorsque la compagnie des chemins de fer Nationaux du Canada fit l'acquisition de la ligne en 1929, elle n'était pas liée à aucune obligation contractuelle envers le public, du moins en autant qu'il appert au dossier.

Cependant, le fait que des octrois ont été accordés indique que la ligne était considérée utile et nécessaire au public.

Le remède aux difficultés des chemins de fer ne relève pas des pouvoirs de la Commission, mais bien de ceux du Parlement du Canada. La coordination de tous les voituriers pour constituer un réseau national de transport, tous les moyens de transport se complétant l'un l'autre, serait une entreprise à l'avantage général du Canada.

Je renverrais la requête.

Le 14 novembre 1935.

Requête de la compagnie des chemins de fer Nationaux du Canada, demandant qu'une ordonnance soit rendue l'autorisant à discontinuer l'exploitation de la partie de sa ligne, sur sa subdivision d'Iberville, dans la province de Québec, qui s'étend de la Jonction de Noyan (mille 0·0) à Iberville (mille 21·9), soit un parcours de 21·9 milles.

Dossier n° 39310.11

JUGEMENT

STONE, COMMISSAIRE:—

Cette requête s'applique à la section sud de la ligne de l'ancienne compagnie de chemin de fer Quebec, Montreal and Southern, laquelle section comprenait à une certaine époque les deux embranchements suivants, à savoir: l'em-

branchement qui s'étend de la Jonction de Noyan à Iberville—21·9 milles, et l'embranchement qui s'étend d'Iberville à la Jonction de St-Hyacinthe—31·3 milles, soit un parcours total de 53·2 milles.

Avec l'approbation de la Commission, le service fut entièrement discontinué le 21 avril 1931 sur la section qui s'étend de la Jonction de Noyan à Iberville et, au mois de novembre 1931, sur celle qui s'étend d'Iberville à la Jonction de St-Hyacinthe.

A une séance de la Commission tenue à St-Hyacinthe le 15 mai 1935, jugement a été rendu accordant la requête de la compagnie du chemin de fer à l'effet d'être autorisée à discontinuer l'exploitation de sa ligne entre St-Hyacinthe et Iberville, " telle autorisation devant être sans préjudice aux droits aux recours des parties devant les tribunaux," (page 759, vol. 621 de la preuve).

Je ne suis pas d'accord avec les conclusions auxquelles en est arrivé le Commissaire en chef suppléant dans son jugement en cette cause. Je suis d'avis avec lui que les camions sont beaucoup plus avantageux que les chemins de fer pour ce qui est du transport à courte distance et cet aspect de la question constitue un puissant facteur dans la cause dont il s'agit ici.

La plupart des endroits compris dans ce territoire sont desservis par un service régulier d'autobus qui circulent entre Montréal et Boston, et par un service local établi entre Montréal et la région. Noyan se trouve à environ un mille de la station de Cantic, et Iberville est près de la ligne principale du Canadien National faisant partie de son district de Montréal et de Portland.

M. Grégoire a prétendu qu'il pouvait expédier ses produits par camion à meilleur marché et que son commerce n'en souffrait pas. Interrogé par le commissaire en chef suppléant au sujet des camions qu'il avait en service, il a répondu comme suit:

> " Q. Ça vous coûte plus cher avec vos trucks?—R. C'est 10 cents de moins.
>
> " Q. En hiver qu'est-ce que vous faites?—R. Les chemins sont ouverts jusqu'à Henryville."

Interrogé par M. Darveau:

> " Q. C'est seulement pour les expéditions durant l'été?—R. L'hiver aussi, il n'y a pas assez de neige; c'a jamais arrêté." (Page 642, vol. 621.)

Les hivers dans le territoire traversé par cette ligne ne sont pas plus rigoureux, et la quantité de neige qui y tombe n'est pas plus considérable que dans plusieurs parties des autres provinces du Dominion. La preuve a démontré que les autobus et les camions pouvaient circuler tout l'hiver et qu'ils y circulaient.

La concurrence des autobus et des camions se rencontre plus fréquemment dans les centres où la population est plus considérable que dans les régions éloignées. Ces conditions sont dues d'abord à l'état des chemins améliorés et au gros volume du trafic disponible.

Pour l'année 1930, il a été démontré que cette ligne avait subi une perte de $18,876 dans ses frais d'exploitation, outre les frais pour entretien remis à une époque ultérieure, et pour remettre en exploitation cette ligne abandonnée il en coûterait la somme de $80,000.

Certains matériaux sur cette ligne se détériorent, mais quelques uns pourraient encore être d'une plus grande valeur si on les utilisait maintenant au lieu de plus tard.

Le public en général est intéressé dans l'exploitation économique des chemins de fer de l'Etat, et la principale chose à considérer pour la Commission est de savoir si l'intérêt public justifie le maintien ou l'abandon de cette ligne sur laquelle le service a été discontinué depuis quatre ans. Le trafic local le long de cette ligne ne semble pas en justifier le rétablissement du service.

Les avocats du gouvernement de Québec et des municipalités intéressées ont soulevé la question des octrois qui ont été accordés pour la construction de

ce chemin de fer. Le paiement des subsides, bien qu'étant un des facteurs pour juger des requêtes de ce genre, et par conséquent devant être pris en considération, ne lie pas la Commission ni n'exerce aucun contrôle sur elle.

Il ne semble pas y avoir de motifs qui vaillent pour retarder davantage une décision en cette affaire, et en tenant compte de toutes les circonstances qui l'entourent, j'accorderais la requête sans préjudice aux droits ou recours des parties devant les tribunaux.

Le 22 novembre 1935.

Le Commissaire Norris s'est rallié au jugement ci-dessus.

ORDER No. 52493

In the matter of the application of the Canadian National Railways, hereinafter called the "applicants," under Section 165A of the Railway Act, for approval of the abandonment of operation of that portion of the Iberville Subdivision, in the Province of Quebec, between Noyan Junction (Mile 0·0) and Iberville (Mile 21·9), a distance of 21·9 miles.

File No. 39310.11

MONDAY, the 25th day of November, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at St. Johns, Quebec, May 13, 1935, in the presence of counsel for the applicants, the Government of the province of Quebec, the parishes of Ste. Anne de Sabrevois, St. Georges de Clarenceville, and St. Thomas de Noyan, the municipality of Henryville, and the villages of St. Sebastien and Clarenceville, and what was alleged,—

It is ordered: That the abandonment of operation of that portion of the applicants' Iberville Subdivision, in the province of Quebec, between Noyan Junction (Mile 0·0) and Iberville (Mile 21·9), a distance of 21·9 miles, be, and it is hereby, approved; such approval to be without prejudice to the rights or remedies of the parties, if any, in the courts.

H. GUTHRIE,
Chief Commissioner.

Application of the Canadian National Railways for an Order granting leave to abandon the operation of its Otterville Subdivision in the Province of Ontario, between Burgessville (M. 31·0) and Woodstock (M. 40·2)—a distance of 9·2 miles.

File 39310.12

JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

An application was made by the Canadian National Railways under section 165A of the Railway Act, section 2, subsection 3, of the Canadian National-Canadian Pacific Act, 1933, and all other appropriate statutory provisions, for

an order granting it leave to abandon the operation of the following line of railway, namely:—

A portion of the Otterville subdivision in the province of Ontario, between Burgessville (M. 31·0) and Woodstock (M. 40·2)—a distance of 9·2 miles.

The line in question was opened for operation in 1875. It was built under the charter of the Port Dover and Lake Huron Railway Company under the following statutory authority Ontario, Act 35 Victoria, Chapter 53 of 1872. In 1881 the Port Dover and Lake Huron Railway Company, by an amalgamation, formed the Grand Trunk, Georgian Bay and Lake Erie Railway Company, which in 1893 was amalgamated with the Grand Trunk Railway Company of Canada. The Grand Trunk Railway Company of Canada amalgamated with the Canadian National Railway Company in 1923. The portion of track involved was laid with rail which was mostly 60-pound steel, and is noted to be in poor condition. The ties are 90 per cent untreated, and are stated to be in poor condition. No train service has been operated over the line in question since September, 1932, nor has there been any maintenance. It is now used for storage purposes. The district is served by an improved county highway which parallels the railway line and connects with main highway at Woodstock. The only stopping place on the line is Currie's, which is five miles from the nearest railway station. From October 1, 1930, to September 30, 1931, the total earnings at this point amounted to $276.

Exception was taken at the hearing by the Board of Trade of Woodstock to the proposed abandonment. The city of Woodstock expressed, through its mayor, the opinion that there was some justification for the abandonment of some of the railways on the ground of economy, and that this might be applicable in the present case. The Purina Mills (Ralston Purina Company, Limited) of Woodstock, took exception to any change in the present system of mileage rates claiming this would be detrimental to them. It is stated by this company that—" As the freight rates on live stock and poultry feed are based on mileage rates— any increase in published mileage would increase the freight rate . . . and while the abandonment of the line referred to may save the railway the upkeep—we trust your Board will see fit to continue the present mileage scale of rates, as these rates have been in effect for many years, and industry has relied on these mileages when locating their plants in this territory."

In its application, the railway in describing the territory involved states—" this line passes through a prosperous, well settled farming territory; there are no industries. There is a good improved county highway. . . . Snow conditions are rather bad at times, but as a rule roads are kept opened all through winter. Although there are no regularly operated bus lines serving this territory, there are a large number of independent truckers operating every day of the year and taking the traffic wherever it is offered."

The representative of the Purina Mills Company states in evidence that until recently their shipments to nearby points had been handled in truckload lots by the dealers. Reference was made to the railway having published rates on a lower basis to meet truck competition. These low truck competitive rates were established April 15, 1935, and have been tariffed to continue in effect until April 14, 1936, unless sooner cancelled, changed or extended. They are still in operation.

Mr. Marsh testified in evidence that the freight rates in question, coupled with the transit allowances on grain, of which their feed is largely composed, had enabled the company to ship feed to a good many local points by freight at a considerable reduction under what they were able to do by truckload. He stated that comparatively little grain had been moved to nearby points.

There is no passenger traffic moving; the line is closed for traffic. The latest figures of earnings at Currie's show a negligible volume of traffic. On

the evidence, truck competition plays a very considerable part in the territory in question. All things considered, I think the application of the railway is justified.

November 23, 1935.

Commissioner Norris concurred.

Garceau, F. N., Deputy Chief Commissioner (Dissenting):

This application for abandonment is similar as to circumstances to the application (file 39310.11) of the Canadian National Railways for leave to abandon the operation of a portion of its Iberville subdivision, between Noyan Junction and Iberville, a distance of 21·9 miles.

In both cases, service has been discontinued for years and the field left to motor vehicles.

With due deference to any conflicting opinion, I believe the following considerations embodied in my minority judgment in the above-mentioned case ought to prevail.

The transportation problem in Canada was studied by a Royal Commission in 1931-32; the necessity of the railways being maintained and of a control of highway carriers was insisted upon. Paragraph 43 of the report, at p. 102, reads thus:—

> "Relief to the railways from the inroads being made by trucks into freight earnings will come by restriction and regulation of truck traffic as distinct from taxation, and by some form of co-ordination with rail traffic."

Paragraph 46, p. 103, says:—

> " . . . there is a growing realization that conditions of operation must be equalized as far as possible between the railway and the truck. The truck cannot replace the railway and it must not be allowed to completely strangle its competitor and leave the country without an essential transport service."

I would also refer to paragraph 49, p. 103; paragraphs 55, 56 and 57, p. 104; paragraph 63, p. 105.

As railways are essential, it is urgent that the transport by trucks, busses or water be controlled in exactly the same manner and by the same authority as the transport by rail, so that, instead of competing ruinously with each other, the various means of transportation would complement one another and furnish the public with transportation facilities at the lowest possible prices.

The plight of the railways is uncontrolled competition by other public carriers, motor vehicles, etc.

Mr. Rand, C.N.R. Counsel, blames cessation of railway service on truck competition (Evidence Noyan Junction-Iberville Case, vol. 621, part 2, p. 650).

I would also refer to the dictum of Mr. B. T. Chappell, General Superintendent of the Canadian National Railways at Vancouver (see Ottawa *Citizen*, September 3, 1935):—

> "There are those who think the railways are backward in failing to go into the truck business, but the railway company, no matter how efficiently it operated trucks, would lose money competing against opera-

tors ignorant of costs and rates. In the meantime, the trucks are using the highways practically free of charge as compared with the railways' enormous investments in right-of-way, all of which is taxed.

"The people of Canada intent upon getting transportation at the cheapest cost, do not realize the effect of unfair truck competition upon the railway industry, which is not only a basic necessity, but with which they are deeply concerned because of their investments in both the publicly-owned and the privately-owned systems."

Mr. T. E. McDonnell, of Toronto, President and General Manager, Canadian Pacific Express, said at Quebec before the Kiwanis Club, on the 17th of October, 1935:—

"Railways were produced on their own rights-of-way and are maintained and operated for the sole purpose of commercial transportation. Highways were not built for commercial transportation, but having been built for another purpose, their use is permitted under varying conditions in different provinces.

"Their use for commercial transportation is of the nature of a by-product and it is suggested that to the extent this by-product threatens the commercial life of the country, it must be controlled not in the interest of the railways, but in the interest of Canada."

Mr. McDonnell stressed the fact that when control and co-ordination are accomplished, it will be done not to help the railways but to protect the people of Canada who must use the railways.

" . . . Canada is entitled to have a complete transportation system made up of all proven methods, so co-ordinated that each method will function in that sphere in which it is most efficient and economical."

Mr. McDonnell defined "transportation" as the commercial movement of people and their goods from where they are to where they want to be.

The control of transportation agencies is also urged by the automotive industry. On the 12th September last, Mr. J. B. Baillargeon, of Montreal, President of the Automotive Transportation Association of Quebec, insisted on the necessity of regulation of highway carriers.

Mr. W. L. Best, Vice-President and National Representative of the Brotherhood of Locomotive Firemen and Enginemen, in his memorandum of January 20, 1933, developed that same proposition.

The above quotations and the evidence given by various witnesses heard by the Board at sittings held at St. Johns, Farnham, Montreal, Victoriaville, Nicolet, Mansonville and elsewhere, show that public opinion acknowledges the necessity of a unique control over transportation agencies by rail or highway.

"The truck cannot replace the railway," says the report of the Royal Commission above quoted. Experience has proven the truth of this dictum.

"Excepting for local carriage in terminal areas, railroad service is not only faster but cheaper than highway transport," asserts the report of experts after two years of study of all forms of transportation (see *Labor,* Washington, D.C., July 18, 1935).

Even if trucks could be satisfactorily substituted to the railway, it would be against public weal to consent to an abandonment of a line in the actual circumstances, until such motor carriers have become real public carriers, under as efficient a control as that to which the railways are subject.

The Board, the authority constituted by Parliament to safeguard to the public a system of transportation, ought not by a decision to expose a section

of the country to be deprived entirely of transportation facilities, at the option of the carriers, or to be charged prohibitive prices.

The Interstate Commerce Commission, in the United States, relying on the services provided by motor vehicles to serve the community, two years ago allowed the abandonment of a fifty-mile branch line between Sioux City and Wynot, in Nebraska. The tracks disappeared, railway employees were separated from their jobs; and now, the *Grain and Feed Review* summarizes the economic results, as follows:—

> "First of all, the grain rate by rail to Sioux City and the East was 3 cents per hundred from the farthest point on the line. Now the rate is 10 cents a bushel to Sioux City. Coal was laid down in the farthest town for 20 cents a ton, while at present truckers are offering to deliver coal to close-in points at $2 a ton.
>
> "Farm values have depreciated from 50 to 75 per cent. . . ." (See *Labor*, Washington, D.C., November 12, 1935).

It is true that this line was not operated during the last few years, but the motor vehicle operators knew that the line was not abandoned. If to-morrow this line were dismantled, the inhabitants of this region might face the experience of the Nebraska people.

It is all very well to say that motor transportation is a substitute to the railways but we must not forget that this substitute can cease to exist on the morrow.

Relief to the railways' difficulties lies not with the Board but with the Parliament of Canada. The co-ordination and control of all carriers so as to constitute a national transportation system, all agencies completing one another, would be a work for the general advantage of Canada.

I would dismiss the application as being premature.

December 2, 1935.

ORDER No. 52519

In the matter of the application of the Canadian National Railways, hereinafter called the "applicants," under Section 165A of the Railway Act, for approval of the abandonment of operation of that portion of the Otterville Subdivision, in the Province of Ontario, between Burgessville, Mile 31·0, and Woodstock, Mile 40·2, a distance of 9·2 miles.

File No. 39310.12

WEDNESDAY, the 4th day of December, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Woodstock, Ontario, May 10, 1935, in the presence of counsel for the applicants and repre-

sentatives of the Woodstock Board of Trade, the city of Woodstock, and the Purina Mills, and what was alleged,—

It is ordered: That the abandonment of operation of that portion of the applicants' Otterville Subdivision, in the province of Ontario, between Burgessville, Mile 31·0, and Woodstock, Mile 40·2, a distance of 9·2 miles, be, and it is hereby, approved.

H. GUTHRIE,
Chief Commissioner.

In the matter of the application of the Department of Highways for the Government of the Province of Saskatchewan, on behalf of the Rural Municipality of Swift Current, No. 137, to reopen the question of the apportionment of cost of maintaining a public crossing over the track of the C.P.R. on the road allowance west of Sec. 30, Tp. 15, R. 14, W. 3rd M., Sask., directed by Order No. 18606 of January 30, 1913, to be borne by the municipality.

File No. 20005

JUDGMENT

McLean, Assistant Chief Commissioner:

By Order No. 18606, dated January 30, 1913, the rural municipality of Swift Current, No. 137, was authorized to construct a highway crossing at rail level over the track of the Canadian Pacific Railway Company on the road allowance west of section 30, township 15, range 14, west 3rd meridian, in the province of Saskatchewan, the cost of construction and maintenance, upon the consent of the Department of Highways of the province, acting for the municipality, being placed on the municipality.

The present application is to reopen the matter for the purpose of varying the order to provide that the maintenance cost be placed upon the railway company instead of the municipality. The grounds upon which the application is based are that the department had received information from the Surveyor General at Ottawa that the road allowance in question was surveyed on the ground prior to August 30, 1882, and that, as the railway's location plan was not approved until November 24, 1882, under the ruling in Municipality of Webb No. 138, Sask., v. C.P.R., 40 C.R.C. 116, the municipality was senior at the point of crossing, and the cost of maintenance, therefore, should be upon the railway.

The railway's reply was that no evidence was available to show any definite date in 1882 when the survey of the western boundary of the township was completed; that the plan of the township in the Department of the Interior at Ottawa indicates that the south boundary of the township was staked on the ground on August 22, 1882; that the east and west boundaries were staked on the ground some time during the year 1882, but no definite dates for the latter boundaries are available; that, following the staking of the boundaries, it would take a considerable time to prepare the plans, which were in fact not approved by the Surveyor General until February 26, 1884; so that until that date there was not a completed survey of the township, and that the township was not divided into sections until May, 1883.

The company's submission was that if the date of the staking on the ground of the township lines is to be taken as the date to establish the priority or otherwise of the township, then the date on which the railway was staked, or originally located, should be taken as the corresponding date so far as the railway is concerned. The contract for the construction of the portion of line involved

was let March 1, 1882, and the line completed to a point at least 75 miles west of the crossing in question in the fall of 1882. The fact, the company alleges, that the location plan was approved on November 24, 1882, in itself indicates that the line had been laid out on the ground a considerable time prior to that date.

A further submission by the company as establishing seniority was that an agreement entered into with the Territorial Government, arrived at after negotiations extending over a period of years, as to the respective dates of survey of the townships of the different portions of the company's line, showed the railway senior at the crossing involved in the present application.

The agreement was not produced. The explanation for failure to do so was that the file may have been consumed in a fire at the company's Winnipeg offices some years ago, which destroyed a great number of files. Exhaustive search had been made for it, counsel said, but it could not be found. Secondary evidence, therefore, of its existence and contents, dealing with the point in issue on this application, was admitted at the hearing. Colonel Dennis, the Chief Engineer and Deputy Minister of Public Works in the late Territorial Government which at the time had control of the highways, testified that such an agreement had been entered into. His evidence in this connection is as follows:—

> "The Territorial Government through the Department of Public Works and the Attorney General's Department took the ground that so soon as the survey of a township was approved, automatically the title to the road allowances area passed to them. The railway company on the other hand took the ground that under their act of incorporation they were entitled to a complete right of way, a patent covering a complete right of way, whereas we on behalf of the Territorial Government took the ground that the Territorial Government was entitled to the patent to the road allowances as soon as the survey of a township was completed. It is a long time ago but as far as my recollection serves there was a great deal of correspondence backward and forward between the Department of Public Works and the Canadian Pacific officials in Winnipeg, and between the two legal departments. Finally an agreement was entered into between the Territorial Government and the Canadian Pacific Railway Company under the terms of which the railway company agreed that in the case of townships which had been surveyed and the survey approved before the railway line was constructed the railway company admitted their liability to open and maintain the road allowances, and that in those townships that were surveyed or subdivided after the railway line was located and built they would only open the road allowances and maintain crossings when requested to do so by the Department of Public Works of the territories and at the cost of the local improvement district." (Vol. 626 of Ev., p. 2572.)

The agreement was illustrated by a map which showed in one colour the townships which had been surveyed and the survey approved before the construction of the railway and in a different colour those townships which were surveyed and subdivided and the survey approved subsequent to the construction of the railway line. This map was produced and is on file with the Board. It shows the crossing in issue in a township subdivision which, under the agreement, was to be constructed and maintained at the cost of the Local Improvement District.

The evidence on this point is confirmed by the following letter from the Director of Surveys at Edmonton. The letter was read at the hearing and forms part of the record. (P. 2577 of Ev.):—

"At the request of Mr. G. A. Walker, your company's solicitor, in Calgary, I am enclosing herewith portions of the provincial maps of Alberta and Saskatchewan on which I have had marked in distinctive colours of yellow and blue the territory through which your company's line passes where the railway was constructed before and after the subdivision into townships. Those townships subdivided before the railway was constructed are shown coloured yellow, and those subdivided subsequently to the railway being constructed are shown coloured blue. This is taken from a map we have in this office, which was prepared in the days of the Northwest Territories.

"The question of the seniority of the railway crossings appears from our files to have been the cause of this map being prepared, and our files would tend to show that the various areas were agreed upon after considerable discussion had taken place between Mr. J. S. Dennis, who was at that time the Deputy Commissioner of Public Works, and Mr. William Whyte, of the Canadian Pacific Railway Company.

"On our part we have from the time of the formation of the province of Alberta looked upon this map as the result of an agreement then reached in questions affecting seniority between the railway company and the province in the matter of railway crossings within this territory, and until some two or three years ago there does not appear to have been any questioning of same. However, in recent years we have from time to time received accounts from the Canadian Pacific Railway Company covering the maintenance of crossings in territory in which, according to the map, seniority had been ceded to this department, although I am free to admit that in some cases we were bound to recognize that according to the date of the subdivision plan the railway appeared to be senior in spite of the fact that according to the map our seniority was recognized.

"It is quite desirable of course that some definite understanding should be reached regarding seniority in such cases, and I believe that your Mr. G. A. Walker fully understands the position of this department, and that it is as a result of the information supplied to him by the writer that we are being asked to forward to you the map enclosed herewith."

Mr. MacLean for the Government of the province of Saskatchewan argued that on the evidence before it the Board could not consider the agreement at all: "That no importance should be attached to that evidence by the Board, unless that agreement can be brought before the Board in its original form and an opportunity given to both parties to peruse it." (P. 2580 of Ev.)

If counsel meant by his argument to dispute the existence of the agreement, where as here it is material to the issue between the parties, then a strict enforcement of the rule in such cases would shut out the substitution of oral evidence of the contents of the writing.

I do not understand, however, that Mr. MacLean goes the length of disputing the existence of the agreement. His objection rather is as to Colonel Dennis' recollection as to the terms and contents of a writing after a lapse of so many years. If right in this understanding of Mr. MacLean's position, there is no ground for excluding oral evidence. If wrong, and counsel intended by his argument to dispute the fact that an agreement had ever existed, and that therefore Colonel Dennis' evidence of the agreement—although its admission was not objected to at the hearing—should not be considered, the production of the provincial maps of Alberta and Saskatchewan showing in distinctive colours the territory through which the company's line passed where the railway was constructed before and when constructed after the subdivision into townships, considered in conjunction with the letter of the Director of Surveys, which, as

stated, was read into the record at the hearing, setting forth the reason for the preparation and deposit of the plan in the Department of Public Works at Edmonton, along with the fact that the province of Alberta looked upon the plan as the result of an agreement to fix seniority at railway crossings within the territory, are sufficient, in my opinion, to show that the matter had been considered by the parties and accepted as the basis for determining seniority.

Although agreements between parties, unless confirmed by Dominion Act so as to constitute the agreement in effect a special Act, are not binding upon the Board, the Supreme Court of Canada has held that the agreement is an element to be considered by the Board in determining the rights of parties. Montreal Park and Island R.W. Co. v. City of Montreal, 11 C.R.C. 254; and Grand Trunk Pacific Ry. Co. v. City of Edmonton, 15 C.R.C. 445. Speaking generally, the rule has been to give effect to such agreements, London Fence, Limited, v. Canadian Northern Ry. Co., Board's Annual Reports, 1909, 291, at p. 292; Village of Fergus v. Grand Trunk Ry. Co., 18 C.R.C. 43, unless in the circumstances of the particular case it would not be reasonable or expedient to enforce the terms of the agreement. Increase in Rate Case, 22 C.R.C. 49; Canadian Pacific Railway Co. and Spanish River Pulp and Paper Mills v. Algoma Eastern Ry. Co., 22 C.R.C. 381; and Department of Justice v. Ottawa Electric Ry. Co., 39 C.R.C. 289.

It would seem that where parties have got together and settled the principle to be applied in determining the question of seniority at railway highway crossings, the Board should not disturb the arrangement unless of the opinion that it was not a fair and reasonable one.

In the conclusion reached as to the proper disposition of this case, it is unnecessary to deal with the arguments of counsel for the railway, that if the date of running the lines on the ground be taken as a starting point for the municipality, then the date of running the lines on the ground by the railway company should be taken as the corresponding date in deciding the question of seniority at the points of crossing; and that the former order, having been made upon the application and consent of the municipality and in operation all these years, should not now be disturbed; nor is it necessary in this application to consider the cases referred to in the argument of counsel for the Government as establishing the principles applied by the Board in deciding the question of seniority.

Neither do I deal with the general question as to the effect, if any, of the Dominion Lands Act and the Surveys Act in establishing priority rights at crossings, to which counsel devoted considerable argument at the hearing. These arguments will be available for consideration when that question is being decided.

No consideration was given the agreement in the Webb case (40 C.R.C. 116), for the reason that no evidence of its existence which the then Chief Commissioner would accept had been furnished. Mr. Reycraft sought at the hearing of that application to establish the agreement on a letter from Mr. Dennis outlining what the agreement was.

> "The Chief Commissioner: That is not evidence that I am going to accept. If you want to establish that, you will have to call evidence and prove it." (Vol. 599 of Ev., at p. 1862.)

For the reasons I have given, the railway under the circumstances of this case should be regarded as senior at the crossing in question, and the application of the department to vary the former order therefore refused.

Ottawa, November 28, 1935.

Commissioners Norris and Stone concurred.

ORDER No. 52518

In the matter of the application of the Department of Highways for the Government of the Province of Saskatchewan, on behalf of the Rural Municipality of Swift Current No. 137, hereinafter called the "applicant," to reopen the question of the apportionment of cost of maintaining a public crossing over the track of the Canadian Pacific Railway Company on the road allowance west of Section 30, Township 15, Range 14, West 3rd Meridian, directed by Order No. 18606 of January 30, 1913, to be borne by the applicant.

File No. 20005

WEDNESDAY, the 4th day of December, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Regina, Saskatchewan, July 22, 1935, in the presence of counsel for the applicant and the Canadian Pacific Railway Company, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

Application of the Rural Municipality of Webb No. 138 for an Order placing the cost of maintenance of the Crossing over the Canadian Pacific Railway, between Sections 1 and 2, Township 14, Range 18, W. 3 M., at Antelope, Sask., approved by Order No. 19901, dated July 25, 1913, on the Canadian Pacific Railway.

File No. 19538

JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

Under date of May 23, 1935, the Municipality of Webb No. 138 made application to the Board for an order placing the cost of maintenance of the crossing over the Canadian Pacific Railway, between Sections 1 and 2, Township 14, Range 18, W. 3 M., at Antelope, Sask., on the Canadian Pacific Railway. In reply the applicant was advised, under date of May 23, 1935, that apparently the statement in the application was incorrect, it appearing that instead of referring to crossing between Sections 1 and 2, 14-18, W. 3rd, the present application was in reality for an order placing the cost of maintenance of the crossing over the Canadian Pacific Railway between sections 2 and 3, township 14, range 18, W. 3 M. In reply the Board was advised by letter from the municipality, dated June 6, 1935, as follows:—

> "We acknowledge your letter of the 28th ultimo, enclosing a copy of our letter to you of the 23rd of May, 1935.
>
> "We have received a bill from the Canadian Pacific Railway Company for $25.62, covering the maintenance cost of highway crossing at Mileage 27·9, Maple Creek Subdivision, Sections 1 and 2-14-18 W. 3rd, B R.C. No. 19901, dated July 25, 1913.
>
> "This highway crossing appears to be on the original road allowance between the above sections.

"We have set out in the second paragraph above the description as recited on the C.P.R. bill, this has nothing to do with the crossing between sections 2 and 3-14-18, W. 3rd, which is one mile west.

"As requested we enclose a rough sketch of the crossing for which we are asking for an order from your Board placing the cost of maintenance with the company.

"Kindly give this matter due consideration and if at all possible comply with our request."

The matter was set down for hearing at Regina, July 22, 1935. No one appeared on behalf of the applicant municipality, and Mr. MacLean who was acting for the Department of Highways, Saskatchewan, stated that his department had received no notice. He also stated that while his department had received no notice, that if an appearance were being made, he thought the same arguments would be applicable as in the Swift Current case, subject to the dates of the surveys, and confirmation of dates of survey and approval by the Board in the official records.

Under Order No. 19901, dated July 25, 1913, authorization was given to the applicant to construct and maintain at its own expense the said crossing over the Canadian Pacific Railway at Antelope, Gull Lake and Seward. The railway urged that the arguments given on file 20005 should apply.

No appearance having been entered, and no submission filed by the applicant municipality at the hearing, there does not appear to be anything to take it out of the decision rendered in the Swift Current Case (Board's file 20005).

The application is accordingly refused.

December 3, 1935.

Commissioners Norris and Stone concurred.

ORDER No. 52517

In the matter of the application of the Rural Municipality of Webb No. 138, in the Province of Saskatchewan, for an Order placing on the Canadian Pacific Railway Company the cost of maintenance of the crossing over its railway between Sections 1 and 2, Township 14, Range 18, West 3rd Meridian, at Antelope, Saskatchewan, approved by Order No. 19901, dated July 25, 1913.

File No. 19538

THURSDAY, the 5th day of December, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Regina, Saskatchewan, July 22, 1935, in the presence of counsel for the Department of Highways of the Government for the province of Saskatchewan and the Canadian Pacific Railway Company, no one appearing for the applicant, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

In the matter of the consideration of the question of the apportionment of the cost of construction and maintenance of the highway crossing over the C.N.R. on the road allowance east of the S.E. ¼ of Sec. 8-54-7, W. 3 M., reserved by Order No. 51094, dated June 9, 1934.

File No. 13272.27

And in the matter of the consideration of the question of the apportionment of the cost of construction and maintenance of the highway crossing over the C.N.R. on surveyed road in the S.W. ¼ of Sec. 17-54-7, W. 3 M., reserved by Order No. 51095, dated June 9, 1934.

File No. 13272.28

JUDGMENT

McLean, Assistant Chief Commissioner:

The Department of Highways for the Province of Saskatchewan was authorized to construct highway crossings over the Canadian National Railways on the road allowance east of the southeast quarter of section 8, township 54, range 7, West 3rd Meridian; and on a surveyed road in the southwest quarter of section 17, township 54, range 7, West 3rd Meridian, the question of the apportionment of the cost of construction and maintenance of the crossings being reserved in the Orders for further consideration.

The Dominion Lands Surveys Act, 1908, c. 21 (R.S.C. 1927, c. 117, s. 56 (3)), provided that " No land shall be held to be surveyed, or re-surveyed until the official plan of the survey or re-survey has been confirmed by the Surveyor General."

Mr. MacLean, Counsel for the Department of Highways, admitted at the hearing that the railway's location plan was approved and the railway constructed prior to the survey of the township—the location plan was approved in 1910 and the survey map of the township confirmed by the Surveyor General in 1912—and that, " according to the strict rule of seniority, the railway is senior." He based his contention for seniority, however, on the question of the reservation of roads according to the Dominion Government surveys.

Until the larger question of whether all lands reserved for road allowances under the Dominion Lands Act are statutory highways is decided, the railway, under the junior and senior rule, is senior at the points of crossing in question, and the cost of construction and maintenance, therefore, is upon the department or municipality as junior.

December 3, 1935.

Commissioners Norris and Stone concurred.

ORDER No. 52515

In the matter of the consideration of the question of the apportionment of the cost of construction and maintenance of the highway crossing over the Canadian National Railways on the road allowance east of the Southeast Quarter of Section 8, Township 54, Range 7, West 3rd Meridian, in the Province of Saskatchewan, reserved by Order No. 51094, dated June 9, 1934.

File No. 13272.27

WEDNESDAY, the 4th day of December, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Regina, Saskatchewan, July 22, 1935, in the presence of counsel for the Department of Highways for the province of Saskatchwan and the Canadian National Railways, and what was alleged,—

It is ordered: That the cost of constructing and maintaining the said highway crossing over the Canadian National Railways on the road allowance east of the southeast quarter of section 8, township 54, range 7, West 3rd Meridian, in the province of Saskatchewan, be borne and paid by the Department of Highways for the province of Saskatchewan.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52516

In the matter of the consideration of the question of the apportionment of the cost of construction and maintenance of the highway crossing over the Canadian National Railways on the surveyed road in the Southwest Quarter of Section 17, Township 54, Range 7, West 3rd Meridian, in the Province of Saskatchewan, reserved by Order No. 51095, dated June 9, 1934.

File No. 13272.28

WEDNESDAY, the 4th day of December, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Regina, Saskatchewan, July 22, 1935, in the presence of counsel for the Department of Highways for the province of Saskatchewan and the Canadian National Railways, and what was alleged,—

It is ordered: That the cost of constructing and maintaining the said highway crossing over the Canadian National Railways on the surveyed road in the southwest quarter of section 17, township 54, range 7, West 3rd Meridian, in the province of Saskatchewan, be borne and paid by the Department of Highways for the province of Saskatchewan.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52484

In the matter of the application of the Niagara Lower Arch Bridge Company, Limited, hereinafter called the "applicant company," for approval of Supplement No. 4 to Tariff C.R.C. No. 1, covering tolls to be charged for the use of the Lower Arch Bridge at Niagara Falls, on file with the Board under file No. 36795.8.

FRIDAY, the 22nd day of November, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant company's said Supplement No. 4 to Tariff C.R.C. No. 1, covering tolls to be charged for the use of the Lower Arch Bridge at Niagara Falls, on file with the Board under file No. 36795.8, be, and it is hereby, approved.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52494

In the matter of the Order of the Board No. 51686, dated January 24, 1935, suspending tariff schedules containing provisions as therein set out with respect to heater service for perishable shipments.

File No. 18855.71

WEDNESDAY, the 27th day of November, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon its appearing that the Canadian Fruit and Vegetable Jobbers Association and the railway companies have reached an agreement upon modified tariff provisions to replace those under suspension,—

The Board orders: That such modified tariff provisions, on file with the Board under file No. 18855.71, may be published to become effective December 15, 1935; and that the said Order No. 51686, dated January 24, 1935, be, and it is hereby, rescinded.

H. GUTHRIE,
Chief Commissioner.

GENERAL ORDER No. 546

In the matter of the Standard Conditions and Specifications for Wire Crossings prescribed by General Order No. 231, dated May 6, 1918, and the proposed amendment of Specification CC of Part II thereof.

Case No. 4704

THURSDAY, the 21st day of November, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon reading the submissions filed on behalf of the Canadian National Railways, The Bell Telephone Company of Canada, and the Railway Association

of Canada, the said parties consenting; and upon the report and recommendation of the Electrical Engineer of the Board,—

It is ordered, that the Standard Conditions and Specifications for Wire Crossings, prescribed by General Order No. 231, dated May 6, 1918, be, and they are hereby, amended by striking out Specification CC, Part II thereof, and substituting therefor the following, namely:—

"*CC. Laying.*—Subject to the following exceptions marked 1, 2, and 3, the conduit or duct to be laid on a base of 3 inches of concrete, mixed in proportion, 1 of cement, 3 of sand, and 5 of broken stone or gravel. Where stone is used, such stone is to be of a size that will permit of its passing through a 1-inch ring. After ducts are laid, the whole to be encased to a thickness of 3 inches on top and sides in concrete mixed in the same proportions as above.

"*Exceptions.*—1. Where not more than two iron or mild steel pipes are used, and where physical conditions permit, the pipes may be forced or driven under the roadbed, instead of being laid in open trench.

"2. Where physical and chemical conditions will permit, a conduit system consisting of not more than two iron or mild steel pipes not exceeding 3½ inches in diameter, or two creosoted wood ducts not exceeding 5 inches square and used for communication lines only, may be laid in the ground beneath railway tracks, without any form of protection.

"3. Tape armoured, wire armoured, or jute covered lead sheathed cable used for communication lines only, may be laid in the ground beneath railway tracks without any form of protection."

H. GUTHRIE,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR SEPTEMBER, 1935

Railway Accidents..	229, with	20 killed and	245 injured.
Railway Accidents at highway crossings.. ..	26, with	12 killed and	24 injured.
	255	32	269

	Killed	Injured
Passengers.. .. ..

1 Automobile—Excessive speed of auto. Minn. licence, B-61-621, Mrs. Wm. Ross, R.R. 6, Stillwater, Minn.
1 Automobile—Attempted to beat train. Licence, Ont. EA-716, T. D. Crawford, Allenford.
1 Automobile—Driver disregarded Wig Wag, which was operating. Licence Ont. BA-339, Chas. Berry, Courtland.
1 Automobile—Driver disregarded Watchman's signal. Licence Ont. BV-171, J. J. Russwurm, Hanover.
2 Auto Truck—Driver failed to see or hear train. Licences, Ont. 60488-C, B. Huffman, Front St., Trenton; 52213-C, Wm. Kent, Fort William.
1 Auto Truck—Ran into side of train. Licence, Ont. 3813-C, Ed. Sherriff, 297 Withrow Ave., Toronto.
1 Pedestrian—Walked into rear of tender.
1 Pedestrian—Walked into side of train.

MANITOBA

1 Automobile—Ran into side of train. Licence Man. 37-125.
1 Automobile—Auto stalled on crossing. Licence Man. 47074.

SASKATCHEWAN

1 Automobile—Driver failed to see or hear train. Licence Sask. 2-171.

ALBERTA

1 Automobile—Ran into side of train. Licence Alta. 23041.

BRITISH COLUMBIA

1 Auto Truck—Driver failed to see Stop sign. Licence No. not given.
1 Bicycle—Brakes on bicycle failed to hold.

Of the 26 accidents at highway crossings, 6 occurred at Protected crossings, and 20 at Unprotected crossings. Sixteen of the accidents occurred during the daylight hours and 10 at night.

OTTAWA, November 26, 1935.

SUMMARIES OF ORDERS ISSUED BY THE BOARD OF RAILWAY COMMISSIONERS

52411. Nov. 1—Authorizing the village of Forest Hill, to construct a crossing for pedestrians over C.N. Rys. at Russell Hill Road, Forest Hill, Ont.
52412. Nov. 2—Declaring C.N. Rys. crossing of Frankford Road, Trenton, Ont., protected to Board's satisfaction so long as present speed limit of 10 miles an hour is in effect and all switching movements flagged over crossing by a member of train crew.
52413. Nov. 1—Declaring Northern Alberta Rys. crossing 3 miles east of Dawson Creek, B.C., protected to Board's satisfaction.
52414. Nov. 4—Directing C.N. Rys. to install wigwag signal at crossing at mileage 6·5 Kensington Subd'n., P.E.I.
52415. Nov. 4—Directing C.N. Rys. to install wigwag signal, in addition to bell, at crossing just east of Hampton Station, N.B.
52416. Nov. 5—Approving Niagara, St. Catharines & Toronto Ry's. Standard Passenger Tariff C.R.C. No. 295.
52417. Nov. 4—Directing C.N. Rys. to install bell and wigwag at crossing of main road at Richmond, P.E.I.
52418. Nov. 4—Directing C.P.R. to remove rock point 200 feet north of crossing at Mileage 59·88 Ste. Agathe Subd'n, Que.
52419. Nov. 4—Directing C.P.R. to improve view at northeast angle of crossing at mileage 49·35 Ste. Agathe Subd'n, Que., by removing high ridge of land to an elevation of 300 feet above the rail.
52420. Nov. 4—Directing C.N. Rys. to install double bells and wigwags, each wigwag to be equipped with flashing light, at crossing of Yale Road, Tp. Chilliwack, B.C.
52421. Nov. 5—Declaring that cost of constructing and maintaining gate installed by Quebec Harbour Comm'rs at north end of Ramsay Street, Quebec, Que., be borne and paid by Quebec Harbour Comm'rs (C.N.R. and Quebec Ry., Light & Power Co.).
52422. Nov. 2—Amending Order 52101, July 22, 1935, by striking out figures "12.00" in 5th line of paragraph 3 and substituting therefor the figures "63.16"—Farm crossing over C.N. Rys. for J. B. Miller, near Old Truro Road Crossing, Co. Hants, N.S.
52423. Nov. 4—Authorizing Sask. Dep't Highways to construct diversion of highway and crossing of C.N. Rys. at Coté, Sask., crossing 970 feet to the east to be closed.

52424. Nov. 6—Declaring C.P.R. crossing 1½ miles south of Smiths Falls, Ont. (Jasper Road), protected to Board's satisfaction.

52425. Nov. 4—Refusing application of C.N. Rys. for abandonment of operation of their Frelighsburg Subd'n between Farnham and Frelighsburg, Que.

52426.

52427.

52428. Nov. 5—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in certain supplements and tariffs filed by C.P.R. under section 9.

52429.

52430. Nov. 5—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in tariffs and supplements filed by Dominion Atlantic Ry. under sec. 9.

52431. Nov. 2—Declaring Dominion Atlantic Ry. crossing of Queen Street, Digby, N.S. (Warne's Mills Crossing), protected to Board's satisfaction so long as present speed limitation of ten miles an hour is in effect.

52432. Nov. 6—Authorizing C.P.R. to operate its trains over subway at DeSalaberry Street, Montreal, P.Q.

52433. Nov. 4—Directing C.P.R. to improve view at northwest angle of crossing at mileage 93·57 Ste. Agathe Subd'n, at l'Annonciation, Que.

52434. Nov. 6—Directing C.P.R. to improve view at northwest angle of crossing at mileage 1·0 St. Guillaume Subd'n, near Farnham, Que.

52435. Nov. 4—Directing C.P.R. to cut down banks west of crossing of No. 8 Highway at mileage 27·94 Waltham Subd'n, Que., to an elevation of 264.

52436. Nov. 4—Directing C.P.R. to improve view at southwest angle of crossing at mileage 105·29 Ste. Agathe Subd'n, near Nominingue, Que., by cutting down trees and lowering of cut.

52437. Nov. 4—Directing C.P.R. to improve view at northwest angle of crossing near Nominingue, Que., by clearing off certain trees.

52438. Nov. 4—Requiring C.P.R. to improve view on west side of crossing near Lacoste, Que., by clearing bush.

52439. Nov. 4—Directing C.N. Rys. to install bell and wigwag at crossing of Station Road at Bic, Que.

52440. Nov. 4—Directing C.N. Rys. to cut down knolls on each side of crossing of Montée Graveline Road, Laval-sur-le-lac, Que.

52441. Nov. 4—Directing C.N. Rys. to install double bells and wigwags at crossing of Highway No. 16, at Johnston, Ont.

52442. Nov. 5—Authorizing C.P.R. to operate its trains over subway at Papineau Avenue, between St. Grégoire & DeFleurimont Streets, Montreal, P.Q.

52443. Nov. 6—Refusing application of C.N. Rys. for abandonment of operation of portion of their Aston Subdivision between Victoriaville and St. Grégoire, Que.

52444. Nov. 7—Approving abandonment of operation of C.P.R. Stobie Branch between mileage 1·6 and Blézard Mine, a distance of 3·42 miles, Ont.

52445. Nov. 8—Authorizing C.N. Rys. to open for traffic revised line between mileage 30·37 and 31·12 Tête Jaune Subd'n, B.C.

52446. Nov. 8—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in tariff C.R.C. No. E-4757, filed by C.P.R. under sec. 9.

52447. Nov. 9—Declaring that the legal rate applicable during period June 25, 1930, to June 17, 1932, from Beachville to Hamilton, Ont., on pulverized limestone, described by shipper as "stone dust (ground limestone)" was 7½ cents per 100 pounds.

52448.

52449.

52450. Nov. 8—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in tariffs and supplements filed by Dominion Atlantic Ry. under sec. 9.

52451. Nov. 14—Authorizing C.P.R. and C.N. Rys. to operate their trains over crossing of their railways at Lachevrotière, Que., without stopping.

52452. Nov. 9—Authorizing C.P.R. to discontinue from Nov. 1 to Mar. 1 each year, the use of bolt-locked derails where wye track connects with passing track to Montebello, Que.

52453. Nov. 8—Approving abandonment of operation of New Brunswick Southern Ry. known as Shore Line Subd'n of C.P.R., between Shore Line Junction and Bonny River, N.B.

52454. Nov. 15—Approving proposed temporary restricted clearance at overhead bridge being constructed at mileage 21·1 Havelock Subd'n, north of Sharbot Lake, Ont.—C.P.R.

52455. Nov. 15—Declaring C.N. Rys. crossing, first south of Allandale Station, Ont., protected to Board's satisfaction.

52456. Nov. 15—Authorizing C.N. Rys. to construct spur to serve Department of National Defence across north and south road allowance between secs. 21 and 20-33-4 W3M., Sask.

52457. Nov. 21—Approving proposed dismantlement by C.N. Rys. to westbound main track between mileage 89·39 and 93·90, and 94·78 and 101·74 Sprague Subd'n, Man., construction of new siding at Sandilands, mileage 96, and new passing track and loading track at Bedford, mileage 100; also approving changes in location of shelters at Bedford and Sandilands.

52458. Nov. 19—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published from Lakeville, N.S., in item 620, also item 635 of first revised page 36; to Kentville, N.S., in item 915 of first revised page 47; and item 1290, also to Toronto, Ont., in item 1350 of first revised page 55—of tariff C.R.C. No. E-4757 filed by C.P.R. under sec. 9.

52459. Nov. 18—Declaring London & Port Stanley Ry. crossing immediately south of Stop 12, Tp. Yarmouth, Co. Elgin, Ont., protected to Board's satisfaction.

52460. Nov. 18—Authorizing C.P.R. to remove automatic bell installed at "Miller's Crossing," about ¾ mile west of Kingsbury, Que.

52461. Nov. 18—Authorizing C.P.R. to remove automatic bell installed at crossing of river road about three miles east of Kingsbury, Que.

52462. Nov. 28—Authorizing C.P.R. to construct a highway crossing in the station yard at Burdette, Alta., opposite Main Street.

52463. Nov. 18—Declaring C.N.Rys. crossing at mileage 30·6 Lac Ste. Anne Subd'n, Alta., protected to Board's satisfaction.

52464. Nov. 19—Authorizing C.N. Rys. to construct spur to serve Co-opérative Fédérée de Québec across Second Street, at La Sarre, Que.

52465. Nov. 18—Approving Supp. 3 to agreement between Bell Telephone Co., and Omer Lacoste, owner of the Danis Telephone System.

52466. Nov. 19—Dismissing application of the parish of St. Mathias de Cabano, Que., for an Order determining who shall bear the cost of damages caused by flooding in the Bérubé Watercourse which crosses the Témiscouata Ry. at Mileage 45·3.

52467. Nov. 19—Relieving Lake Erie & Northern Ry. from maintaining cattle guards at crossings at mileage 6·8, 6·9 and 12·8, in Tp. South Dumfries, Ont.

52468. Nov. 19—Amending Rules for Government of Operating Department of New York Central R.R., by striking out words "every January and July" at end of paragraph 1 of Rule 2, and substituting therefor the words "during the month of April of each year" and by striking the words "every two weeks" in second line of paragraph 2 of Rule 3, and substituting therefor the words "between the 10th and 20th of each month."

52469. Nov. 19—Directing C.P.R. to install automatic bell and wigwag at crossing immediately east of Erskine, Alta.

52470. Nov. 19—Directing C.P.R. to install automatic bell and wigwag at crossing one mile east of Crow's Nest Station, Alta.

52471. Nov. 19—Directing C.P.R. to install automatic bell and wigwag at crossing of Bowness Park Road, Calgary, Alta.

52472. Nov. 19—Directing C.P.R. to install automatic bell and wigwag at crossing of highway east of Carbon, Alta.

52473. Nov. 20—Authorizing C.N. Rys. to cross Commercial Street, North Sydney, N.S., with proposed spur to serve Leonard Brothers, Limited.

52474. Nov. 18—Refusing application of C.P.R. for an Order directing the city of Ottawa and other interested parties to pay entire cost of construction of works directed by Order 51416 on Interprovincial Bridge between Ottawa and Hull.

52475. Nov. 19—Relieving C.P.R. from maintaining cattle guards at five crossings on its Belleville Subd'n, Tp. of Sidney, Ont.

52476. Nov. 21—Amending Order 52310, Sept. 27, 1935, approving abandonment of Kettle Valley Ry. (North Fork Subd'n of C.P.R.) from Westend to Archibald, B.C., by changing the wording of condition (*b*) of said Order to make it more explicit for the purposes of legislation.

52477. Nov. 21—Declaring C.N. Rys. crossing, first east of Grayburn Station, Sask., protected to Board's satisfaction.

52478. Nov. 21—Rescinding Order 51828, Apl. 1, 1935, approving "Details of Subway under Michigan Central R.R., for Harry Oakes" near Oak Hall, Ont.

52479. Nov. 21—Requiring New York Central R.R. to establish following instructions covering westbound movements through C.N. Rys. and Michigan Central interlocker east of Welland, Ont.: "When there are trains occupying westbound main track at Welland, between diamond and Main St. Crossing, no following westbound trains shall be given the call-on signal at diamond, and signals must be kept in normal position until train has come to a stop."

52480. Nov. 21—Relieving C.P.R. from maintaining cattle guards at twelve crossings on its Walkerton Subd'n, Ont.
52481. Nov. 21—Declaring C.P.R. crossing at Ingleside, N.B., protected to Board's satisfaction.
52482. Nov. 21—Declaring C.N. Rys. crossing, first north of Bic Station, Que., protected to Board's satisfaction.
52483. Nov. 22—Dismissing complaint of Vancouver Board of Trade concerning surcharge regulations governing when United States funds are at a discount, or at a premium, in Canada.
52484. Nov. 22—Approving Niagara Lower Arch Bridge Limited Supp. 4 to tariff C.R.C. No. 1, covering tolls to be charged for use of Lower Arch Bridge at Niagara Falls, Ont.
52485. Nov. 23—Approving location and details of C.P.R. proposed new station at Locust Hill, Ont.
52486. Nov. 25—Authorizing C.N. Rys. to construct proposed spur to new ballast pit property at Novar, Ont., across Old North Highway on Lot 20, Con. 1, Tp. Perry, Ont.
52487. Nov. 22—Authorizing C.N. Rys. to reconstruct interlocking plant at crossing over Témiscouata Ry. near Baker Brook, N.B.
52488. Nov. 25—Declaring Père Marquette Ry. crossing of Victoria Street, Ridgetown, Ont., protected to Board's satisfaction.
52489. Nov. 25—Declaring Père Marquette Ry. crossing of Division Street, Kingsville, Ont., protected to Board's satisfaction.
52490. Nov. 27—Authorizing C.P.R. to construct undercrossing at mileage 57·0, Crow's Nest Subd'n, immediately west of Maunsell, Alta.
52491. Nov. 27—Directing C.P.R. to install automatic bell and wigwag at crossing of Rye Road, Ingleside, N.B.
52492. Nov. 27—Directing C.P.R. to install automatic bell and wigwag at crossing two miles north of Wetaskiwin, Alta.
52493. Nov. 25—Authorizing abandonment of operation of C.N. Rys.' Iberville Subd'n, between Noyan and Iberville, Que (21·9 miles).
52494. Nov. 27—Rescinding Order 51686, Jan. 24, 1935, and permitting that tariff provisions suspended by said Order, as modified, may be published to become effective Dec. 15, 1935.
52495. Nov. 27—Approving and authorizing clearances at proposed crusher plants of Chromium Mining & Smelting Corp'rn, Ltd., at Sault Ste. Marie, Ont., —Algoma Central & Hudson Bay Ry.
52496. Nov. 27—Authorizing Alberta Dep't Public Works to construct overhead crossing of C.P.R. one-half mile west of Lundbreck, Alta.
52497. Nov. 30—Approving service station contract between Bell Telephone Co. and Le Syndicat de Téléphone Rural de Stoke.
52498. Dec. 2—Requiring Tp. Albion, Ont., to improve approaches to crossing over C.N. Rys. opposite Lots 20 and 21, Tp. Albion, Ont.
52499. Nov. 27—Directing C.N. Rys. to move existing bell and wigwag to northwest angle of crossing of Irishtown Road, Sunny Brae, N.B.
52500. Nov. 30—Authorizing C.N. Rys. to close station at Lobstick, Alta., and remove station building and siding.
52501. Dec. 3—Declaring C.N. Rys. crossing of Clarence Street, Port Colborne, Ont., protected to Board's satisfaction so long as speed limitation of six miles an hour is maintained.
52502. Dec. 3—Approving and authorizing clearances of conopy over platform on C.P.R. siding for D. C. Breault, Montreal, Que.
52503. Dec. 3—Approving and authorizing clearances of canopy over receiving dock on C.P.R. siding for Chrysler Corpr'n at Windsor, Ont.
52504. Dec. 5—Authorizing Toronto, Hamilton & Buffalo Ry. to use and operate bridge over Locke Street, Hamilton, Ont.
52505. Dec. 3—Relieving C.P.R. and International Nickel Co., from maintaining signalman at crossing of their railways at Clara Belle, Ont.

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1936

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXV | Ottawa, January 1, 1936 | No. 21

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Application of the City of Victoria, B.C., for removal of the differential over Vancouver in freight rates on apples, for export through the Port of Victoria.

File No. 39508

JUDGMENT

McLean, Assistant Chief Commissioner:

While this application was presented by the city of Victoria, it is clear, from what is before us, that it is made on behalf of the Victoria Cold Storage and Terminal Warehouse Company, Limited, in connection with apples originating at points in British Columbia and handled through the said company's warehouse for export. Rates named herein are carload rates and stated in cents per 100 pounds, except as otherwise specifically indicated.

The export rate from the Okanagan District of British Columbia was specifically referred to, which is, to Vancouver and New Westminster, 34½ cents and, to Victoria, 38 cents, a differential of 3½ cents. While not referred to by applicant, the same differential—although the rates are higher—applies from the Creston and Nelson Districts of British Columbia. This differential has existed ever since export rates on apples from British Columbia points were first published to Victoria, which was on November 18, 1930. For some years before this time, export rates on apples were published to Vancouver, Westminster and New Westminster.

The removal of the 3½ cent differential is applied for, or, in other words, the establishment to Victoria of the same rates as published to Vancouver. Applicant admits increased cost to the railways of rail and barge service involved in making delivery to Victoria (the water distance from Vancouver to Victoria being 82 miles) and gave no evidence concerning the reasonableness *per se* of the 3½ cents charged. The application is based on other grounds and the principal points specifically advanced by applicant in support thereof may be set out as follows:—

The export rate on wheat from prairie points to Victoria, over the Canadian National Railways, is the same as the export rate to Vancouver.

The domestic rates on certain processed fruits and canned fruits from Okanagan points are the same to Victoria as to Vancouver.

From points in the State of Washington, there is no differential with respect to export rates on apples as between the ports of Seattle and Tacoma; that the Washington growers have and are developing Oriental trade and the Okanagan growers are competing in the same market, but are, to some extent, prejudiced, as compared with the Washington growers, in the matter of rates. This point was very vaguely developed by applicant.

The export rate on apples from Okanagan points is the same to the ports of Montreal, Quebec, Saint John and Halifax, notwithstanding that an extra haulage of over 1,000 miles is incurred between Montreal and Halifax (803 miles is the rail distance Montreal to Halifax).

The Cold Storage Company at Victoria is developing an increasing trade with the Orient and Victoria is the most suitable export port for this traffic, because vessels coming from the Southern United States call at Victoria, which do not touch at Vancouver or New Westminster. In a communication dated February 27, 1935, from the Clerk of the Municipal Council, City of Victoria, addressed to the Minister of Railways and Canals, Ottawa, it is stated:—

> "Efforts are being made to build up and expand the market for British Columbia apples in the Orient and the export movement of these apples must be all through Victoria, as none of the ships carrying these to oriental ports call at Vancouver."

Mr. MacBride, of the Victoria Cold Storage Company stressed the importance of obtaining equal treatment with the ports of Vancouver and New Westminster, because they are in direct competition with the cold storage companies at the points last named with respect to this export apple traffic.

The above mentioned points are hereunder dealt with seriatim.

The export rates on grain from prairie points to Victoria over the Canadian National Railways (but not over the Canadian Pacific Railway) are the same as to Vancouver, not as a result of any direction by the Board, but through an agreement made between the Canadian National Railways and the Panama Pacific Grain Terminals, Limited, prior to the erection of their elevator at Ogden Point dock in the city of Victoria. At sittings of the Board on September 10, 1931, it heard the application of the City of Victoria and the Panama Pacific Grain Terminals, Limited, for an order directing the Canadian Pacific Railway to publish, in its tariff, the same export rates on grain from prairie points to Victoria as fixed to Vancouver. By judgment of the Board dated September 15, 1931, and Order No. 47358 of the same date, the application was refused (Volume 21, Board's Judgments and Orders, page 231) and what is stated in said judgment is relevant to the present application. The Board there held that a rate difference, as between Victoria and Vancouver, did not constitute an unjust rate discrimination between these two points.

The domestic, or local, rates on certain processed fruits and canned fruits from Okanagan points are the same to Victoria as to Vancouver. The railways point out that the tariff item in question contains three columns of rates, based on respective carload minimum weights of 24,000, 40,000 and 60,000 pounds, the rate for the highest carload minimum weight being the lowest, namely, 45 cents, and with respect thereto they stated:—

> "The latter rate was first published in 1924 as a measure of assistance to the canneries then in operation at Kamloops, B.C., and in the Okanagan Valley to permit them to meet the competition of canned goods which were moving by water from Eastern Canada via the Panama canal, as well as the competition of canned goods which had been moving for some time from California by water.
>
> "The question as to whether it would be necessary to apply this rate of 45 cents to Victoria, B.C., was carefully considered by the railways at that time and it was decided that this would be desirable because

the steamers operating from Eastern Canada and California discharged cargo at Victoria and applied the same rates to that port as to Vancouver, B.C. The situation is the same to-day as it was in 1924. In fact the steamer competition from Eastern Canada is keener and there is a regular service in operation."

The carriers state investigation discloses that no canned goods, or processed fruits, have been shipped from the Okanagan District to Victoria for export. It is not alleged by applicant that these rates, which are higher than the rate on apples to Victoria for export, have had any detrimental effect upon it.

So far as relates to applicant's general statement concerning the rates from points in the State of Washington, such as Yakima and Wenatchee, being the same to the ports of Tacoma and Seattle, the railways state:—

"The rail and geographical situations affecting the movement of this traffic to Tacoma and Seattle bear no comparison with those affecting the movement from Okanagan to Vancouver and Victoria.

"The mileage from Yakima to Tacoma via the Northern Pacific Railway is 157·1 miles; and to Seattle 161 miles. The Great Northern Railway mileage from Wenatchee to Tacoma is 195·9 miles; and to Seattle 156·4 miles. Yakima is on the Northern Pacific Railway and Wenatchee on the Great Northern Railway. The Great Northern Railway, in order to maintain shippers at Wenatchee on a parity with the shippers at Yakima, have necessarily had to make the same rate to Tacoma as to Seattle, notwithstanding the fact that the mileage is slightly longer to Tacoma than to Seattle.

"Although not bound to follow rates established in the United States, the Canadian railways have endeavoured as far as possible to keep apple shippers in the Okanagan District on a fair competitive basis with those of Wenatchee and Yakima. The short line distances are as follows:—

	Miles
Yakima to Tacoma	157·1
Wenatchee to Seattle	156·4
Oroville, Wash., to Seattle	293·4
Kelowna to Vancouver	297·5
Vernon to Vancouver	330·9

"Prior to October, 1922, the export rate on apples from Vernon and Kelowna to Vancouver was 45 cents per 100 pounds. Effective October 27, 1922, the rate was reduced to 40 cents per 100 pounds, including the cost of unloading cars. Effective September 5, 1930, the rate was further reduced to 34½ cents per 100 pounds, including the cost of unloading cars. This rate met the rate from Oroville, Washington, to Seattle, which was 34½ cents per 100 pounds. The rate from Yakima and Wenatchee to Seattle was, at that time, 28½ cents per 100 pounds."

It may be noted that Seattle and Tacoma are both mainland points. Their geographical situation is not comparable with what is here involved and the United States rate adjustment furnishes no valid argument in support of this application, apart from the fact that the Board has repeatedly held that rates fixed within the United States are not the criteria of reasonable rates in Canada; that the Board must find its criteria of the reasonableness of Canadian rates within Canada. Volume 17, Board's Judgments and Orders, page 726, at page 732, contains citations from judgments of the Board on this point.

With respect to the export rates on apples from Okanagan points to the Atlantic seaboard, the railways state that the situation with respect thereto is quite dissimilar to the conditions governing the movement from Okanagan points to Vancouver and Victoria. They say that, in the interest of shippers, they

publish the same rate on apples from the Okanagan District to the Atlantic seaboard for export as applies from Wenatchee and Yakima, Washington, to the Atlantic seaboard and it was considered desirable, in so far as the movement through Canadian ports is concerned, to place Saint John and Halifax, as well as Montreal, on the New York basis, notwithstanding the greater mileage to Saint John and Halifax. Rate adjustments of this character have been established, not by direction of the Board, but by the voluntary action of the carriers due to competitive conditions, as well as to assist shippers. There are numerous rate situations of this kind. An outstanding example is in connection with the grain movement eastbound for export where the Canadian railways have found it necessary to maintain the ports of Saint John and Halifax on a rate parity with New York to prevent diversion of traffic to the United States routes.

So far as concerns the vessel service to the Orient and the statement by applicant that none of the ships carrying apples to oriental ports calls at Vancouver, it seems clear, from what is here before us, that there is an inaccuracy in this statement. If this were a fact, the rate to Vancouver would be merely a "paper" rate, so far as the oriental traffic is concerned, and the difference in the Vancouver rate as compared with the Victoria rate would be of no significance to the applicant. The Pacific Coast Terminals, Limited, who intervened in this application, state:—

> "There is no transpacific port, oriental or otherwise, that has not a service from either Vancouver or New Westminster and, to a substantial degree, more than enjoyed at Victoria."

It is shown in the Official Guide of railways and steamship companies that all steamship lines operating between the British Columbia coast and the Orient, as well as vessels of the N.Y.K. Line, call at Vancouver. The American Mail Line vessels operating between United States Pacific coast points and the Orient call at Victoria, but not at Vancouver.

In the matter of the Victoria Cold Storage Company obtaining equal treatment with the ports of Vancouver and New Westminster because it is in direct competition with the cold storage companies at the points last named with respect to this export apple traffic, it is pointed out by the railways, as well as certain interveners hereinafter referred to, that the present comparison of the rate situation, based on the actual cost from the Okanagan District to on-boardship via Victoria over the Ogden Point dock and to Vancouver and New Westminster, on apples destined to the United Kingdom and Europe, is as follows:—

	Vancouver, B.C.		New Westminster, B.C.		Victoria, B.C.	
	Per 100 pounds Cents	Per box Cents	Per 100 pounds Cents	Per box Cents	Per 100 pounds Cents	Per box Cents
Rail rate	34.50	17.25	34.5	17.25	38.0	19.0
Unloading	.....	.....	....	.....	....	....
Handling	2.00	1.00	2.0	1.00	1.0	0.5
Wharfage	2.50	1.25	2.5	1.25	....	....
Harbour toll	0.75	0.375	....	.....	....	....
Total	39.75	19.875	39.0	19.5	39.0	19.5

When destined to the Orient, it is stated the steamship lines absorb the handling charges, making the cost via Vancouver and Victoria as follows:—

	Vancouver, B.C. Per 100 lbs. Cents	Victoria, B.C. Per 100 lbs. Cents
Rail rate	34½	38
Unloading	....	..
Handling	....	..
Wharfage	2½	..
Harbour toll	0.75	..
Total	37¾	38

It is further stated that the American Mail Line, whose vessels call at Victoria, but not at Vancouver, absorb the difference in the rail rate to Victoria versus Vancouver, making the net cost of shipping via Victoria and the American Mail Line the Vancouver rail rate applied to Victoria 34½ cents, wharfage 2½ cents, total 37 cents.

Where the American Mail Line vessels call at Rithet's dock in Victoria, the apples would have to be teamed a few hundred yards from Ogden Point dock to Rithet's dock at the expense of the shipper, owner, or cold storage company, but this is no different to the situation of the Vancouver Ice and Cold Storage Company, located in Vancouver, who, not being located on the waterfront, require to have all apples handled by them trucked to the dock at which the ship is loaded.

Applicant stated the ocean rate on apples from Victoria is the same as from the ports of Vancouver and New Westminster, so that the above comparisons reflect shippers' cost via the three ports mentioned.

Applicant submitted that the question of handling, wharfage, etc., charges should not enter into the matter. I agree that the reasonableness of the rail freight rate should be considered independent of these other charges, but, when consideration is being given to whether a difference in rate constitutes unjust discrimination, or subjects applicant to some detriment, there is precedent for it being proper to take cognizance of the charges affecting the cost of transportation which may be considered as incidental to the through transportation movement.—Volume 7, Board's Judgments and Orders, page 290; Volume 13, Board's Judgments and Orders, page 233; Volume 17, Board's Judgments and Orders, page 659. The Board has stated:—

> "In Volume 12, Board's Judgments and Orders, p. 268, complaint of the Spanish River Pulp and Paper Mills, Limited, at pp. 278 and 279, it is stated:—
>
> > 'In dealing with the question of discrimination, the matter of detriment, if any, to which the applicant is subjected by the alleged unjust discrimination or undue preference must be considered. Difference in rates is discrimination; but the prohibitions of the Railway Act in regard to discrimination are prohibitions of unjust discrimination or undue preference, and the question is whether the discrimination amounts to an unjust discrimination or undue preference.' *In re* Western Tolls, 17 Can. Ry. Cas., 123, at pp. 148 to 156.
>
> > . . . . . .
>
> > 'One criterion of unjust discrimination is whether the district alleged to be discriminated in favour of has profited at the expense of the locality against which it is alleged the discrimination has taken place.'
>
> > Wegenast v. G.T.R. Co., 8 Can. Ry. Cas., 42, at p. 45.
>
> > Toronto and Brampton v. G.T.R. and C.P.R. Cos., 11 Can. Ry. Cas., 370 at p.375.
>
> > Massiah v C.P.R. Co., Board's Orders and Judgments, Vol. 4, p.106.
>
> > 'In Ontario Paper Co. v. G.T.R. Co., 24 Can. Ry. Cas, 177, no evidence was submitted that any rate advantage possessed by any competitor had rendered it more difficult for the applicant company to do business and the allegation of unjust discrimination was held to be unfounded.'
>
> > 'Evidence is required as to how rates complained of react to the detriment of the applicant.'
>
> > Zwicker & Co. v. Can. Nat. Rys., Board's Orders and Judgments, Vol. 12, No. 16, at pp. 152, 153.

'The ultimate test of discrimination is to be found not in difference of rates but in the question whether as a result of this difference an injury is worked to an individual or locality. One test of this is whether the locality alleged to be favoured actually gets into a common market on a lower rate. The rate paid rather than the distance travelled is important.' *In re* Telegraph Tolls, 20 Can. Ry. Cas., 1, p. 23.

"In Volume 13, Board's Judgments and Orders, p. 161, complaint of Messrs. Plunkett & Savage, Calgary, and Scott National, Limited, Medicine Hat, Alta., at p. 164, it is stated:—

'One criterion of unjust discrimination is whether the district or individual alleged to be discriminated in favour of has profited at the expense of the locality against which it is alleged the discrimination has taken place. Where no evidence was submitted that any rate advantage possessed by a competitor had rendered it more difficult for the applicant company to do business, the allegation of unjust discrimination was held to be unfounded.' Ontario Paper Co. vs. G.T.R. Co., 24 Can. Ry. Cas., p. 177."

Volume 21, Board's Judgments and Orders, page 24.

"The Interstate Commerce Commission has stated:—

'To be undue, the discrimination must ordinarily be such that the prejudice arising out of it against one party is a source of advantage to the other alleged to be favoured.' Chicago Board of Trade v. A.T. & S.F. Ry. Co., 29 I.C.C., 438,443.

'A showing of a disparity of rates between different points does not necessarily make out a case of, or result in, undue prejudice, but it must also appear that shipments are made or prevented because of the rate relationship.' Nashville Machine and Supply Co. v. L. & N., 118 I.C.C., 577, 578, 579."

Volume 21, Board's Judgments and Orders, page 25.

It is not shown, on what is before us, that the present rate situation has actually resulted in any detriment to the applicant; that it is at any disadvantage as compared with competing cold storage companies at Vancouver and New Westminster.

The Pacific Coast Terminals, Limited, New Westminster, B.C., the Vancouver Ice and Cold Storage, Limited, Vancouver, B.C., the Terminal Dock and Warehouse Company, Limited, Vancouver, B.C., and the Vancouver Harbour Commissioners intervened in opposition to this application. They protested strongly against the establishment of the same rates to Victoria as applied to Vancouver, pointing out the actual cost from Okanagan points via the ports of Victoria, Vancouver and New Westminster, as already above set out; contending there is no reason why the railways should be forced to assume the additional cost of transporting apples to Victoria, the benefit of which, they assert, would only accrue to the Victoria Cold Storage and Terminal Warehouse Company. They allege that the competition which they face at present is severe, owing to the harbour tolls and wharfage charges assessed at Vancouver which are not imposed on apples handled by the Victoria company, and the granting of the application would work an undue hardship upon them.

The matter of a differential over the Vancouver rate to and from Vancouver Island points has been before the Board in a number of cases and it has found that a rate difference is justified and does not create a rate discrimination which is unjust.

By Order No. 24808, dated March 18, 1916, and for the reasons contained in Judgments dated March 16, 1916, the complaint of the Nanaimo Board of

Trade against the cancellation of coast rates from Eastern Canada to Nanaimo was dismissed, Volume 6, Board's Judgments and Orders, page 9. There was a re-hearing in this case and the complaint again dismissed by Order No. 27220, dated May 18, 1918, for the reasons set out in judgment dated March 25, 1918, Volume 8, Board's Judgments and Orders, page 105.

By Judgment, dated March 28, 1916, and Order No. 24857, dated April 4, 1916, the Board dismissed the complaint of the Huntting-Merritt Lumber Company, regarding lumber rates from Eburne on the Vancouver and Lulu Island Railway higher than published from Vancouver, and reference is there made to other cases where the Board had approved, or directed, rates built up on certain arbitraries, or differences, over the Vancouver rate, Volume 6, Board's Judgments and Orders, pages 13 and 79.

By judgment, dated June 26, 1918, and Order No. 27383, dated June 28, 1918, the application of the Board of Trade of Sidney, B.C., for an order requiring application of British Columbia coast terminal rates to Sidney was refused, Volume 8, Board's Judgments and Orders, page 216.

By judgment of April 9, 1920, and Order No. 29539 of April 15, 1920, complaints of the Lake Lumber Company and others, concerning the differential over the rates from Vancouver on lumber shipments to prairie points, were dismissed, Volume 10, Board's Judgments and Orders, page 59.

The complaints of the Associated Boards of Trade of Vancouver Island and others against the arbitraries charged over the mainland coast rates on lumber from Vancouver Island points were dismissed by judgment dated February 1, 1922, Volume 11, Board's Judgments and Orders, page 423.

The application of the City of Victoria and the Panama Pacific Grain Terminals, Limited, for an order directing the Canadian Pacific Railway to establish the same export grain rates to Victoria as published to Vancouver, has already been referred to herein, Volume 21, Board's Judgments and Orders, page 231.

The applications of the Saanich Fruit Growers' Association and the British Columbia Coast Growers' Association for a reduction in the express rate differential from Victoria were refused by Judgment, dated May 3, 1935, and Order No. 51958, dated May 20, 1935, Volume 25, Board's Judgments and Orders, page 109.

The intent of the law governing rail freight rates, both in Canada and the United States, is to give the carriers some latitude in fixing rates. It is their province to take into consideration commercial competition and any other facts or circumstances affecting their interests, and they may maintain rates less than maximum reasonable rates and rates lower than we can lawfully prescribe, so long as they do not unduly prejudice other communities or shippers, or unduly burden other traffic. It is under such circumstances and not by direction of the Board that there will be found rates to the Atlantic ports which ignore difference in distance thereto, as well as rates to Victoria which are the same as to Vancouver.

Decisions of the Board concerning matters of discrimination and what constitutes discrimination which is unjust, or preference which is undue, also relating to the powers and jurisdiction of the Board under the provisions of the Railway Act, as well as what the railways may do thereunder, have been rendered in a great many cases and numerous citations therefrom, to be found in Volume 24, Board's Judgments and Orders, pages 349 to 360, may be referred to, which, being lengthy, are not repeated here. They cover questions dealing with competitive rates to meet water, market, etc., competition; reduced rates to assist industry; equalization of rates to overcome geographical disadvantages of location, climatic, etc., conditions; differences in production costs and the like.

Upon careful consideration of all that has been submitted, it is not proven that the differential over Vancouver, here complained of, is unreasonable, or that discrimination which is unjust exists and the application must be refused.

OTTAWA, ONTARIO,
December 12, 1935.

Commissioners Norris and Stone concurred.

ORDER No. 52571

In the matter of the application of the City of Victoria, in the Province of British Columbia, for removal of the differential over Vancouver in freight rates on apples, for export, through the Port of Victoria.

File No. 39508

FRIDAY, the 13th day of December, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Victoria, July 12, 1935, in the presence of counsel for the city of Victoria, the Canadian Pacific Railway Company, and the Canadian National Railways, and what was alleged; and upon reading the further written submissions filed,—

It is ordered: That the application be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52520

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for permission to file, on less than statutory notice, cancellation of charges provided for in Item 38, second revised page 24-A of its Tariff C.R.C. No. E-4126, covering dock storage at Sault Ste. Marie, Ontario.

File No. 27612.127

TUESDAY, the 10th day of December, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon its appearing that the said item was published through a misunderstanding; and upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the applicant company be, and it is hereby, granted leave to file, on one day's notice, cancellation of charges provided for in Item 38, second revised page 24-A of its Tariff C.R.C. No. E-4126, covering dock storage at Sault Ste. Marie, Ontario.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52545

In the matter of the applications of the Canadian National Railways and the Canadian Pacific Railway Company, hereinafter called the "Applicant Companies," for permission to file, on less than statutory notice, supplements advancing the effective date of non-application of milling in transit in connection with the water competitive rates to Levis, Quebec, Sorel, and Trois Rivières, which expired on November 30, 1935.

File No. 27612.128

MONDAY, the 16th day of December, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the applicant companies be, and they are hereby, granted leave to file, on one day's notice, supplements to Canadian National Railways Tariffs C.R.C. No. E-853 and C.R.C. No. E-2008, and Canadian Pacific Railway Tariffs C.R.C. No. E-4624 and C.R.C. No. E-4625, advancing effective date of non-application of milling in transit in connection with the water competitive rates to Levis, Quebec, Sorel, and Trois Rivières, in the province of Quebec, which expired on November 30, 1935.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52567

In the matter of the application of the Express Traffic Association of Canada for approval of proposed Supplement "F" to Express Classification for Canada No. 8.

File No. 4397.117

MONDAY, the 16th day of December, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the said Supplement "F", on file with the Board under file No. 4397.117, be, and it is hereby, approved, to become effective January 1, 1936; the said supplement to be published as Supplement No. 6 to Express Classification for Canada No. 8.

H. GUTHRIE,
Chief Commissioner.

GENERAL ORDER No. 547

In the matter of proposed regulations regarding plans required to be filed with the Board in connection with applications for railway crossings, junctions, and drawbridges under Sections 252 and 305 of the Railway Act, and general requirements for interlocking appliances.

File No. 521

MONDAY, the 2nd day of December, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Chief Engineer and the Chief Operating Officer of the Board,—

It is ordered:—

1. That the following regulations regarding plans to be filed with the Board in connection with applications for railway crossings, junctions, and drawbridges under sections 252 and 305 of the Railway Act, and general requirements for interlocking appliances, be, and they are hereby, prescribed for the observance of every railway company within the legislative authority of the Parliament of Canada, namely:—

REGULATIONS REGARDING PLANS REQUIRED TO BE FILED WITH THE BOARD IN CONNECTION WITH APPLICATIONS FOR RAILWAY CROSSINGS, JUNCTIONS, AND DRAWBRIDGES, SECTIONS 252 AND 305 OF THE RAILWAY ACT; AND GENERAL REQUIREMENTS FOR INTERLOCKING APPLIANCES

Send to the Secretary of the Board an application accompanied by three sets of the plan and profile of both railways on each side of the proposed crossing or junction, or of the railway in the case of a drawbridge, for a distance of one mile in each direction.

Scale.—Plan 400 feet to an inch.
Profile 400 feet to an inch horizontal, 20 feet to an inch vertical.

First set for approval by and filing with the Board. Second and third sets to be certified and returned to the parties concerned, with a certified copy of the order.

The applicant must serve copies of the application and the plan and profile on the company whose line is to be crossed or joined, and file with the Board evidence of such service.

When it is proposed to cross a canal or navigable water, approval of the Governor in Council must be secured, as provided in Section 248 of the Railway Act, before making application to the Board.

Upon completion of the work application must be made for leave to operate trains.

INTERLOCKING SYSTEM

General requirements applicable to railways for interlocking appliances of rail level crossings, junctions, and drawbridges

1. An application, accompanied by a plan in triplicate showing the complete layout, shall be submitted to the Board for approval. When possible, railway companies concerned shall agree on the plan before submitting it to

the Board. In the preparation of this plan, the symbols used to indicate all the functions of the interlocking shall be those approved by the Signal Section of the Association of American Railroads. The plan shall show the location of the crossing, junction, or drawbridge, and the position of all tracks and junctions within the limits of the interlocking plant.

2. Rail level crossings and junctions shall be protected by home and approach signals placed each way from the crossing or junction.

3. Drawbridges shall be protected by derails, home and approach signals placed each way from the drawbridge.

4. Rail level crossings of steam railways by electric railways shall be protected by derails on the electric railway, and home signals on the steam railway, placed each way from the crossing. Where the latter is a high-speed railway, approach signals may also be required. In certain cases derails may be required on the steam railway and/or home signals on the electric railway, depending on the relative importance of the traffic.

5. When railways bring all trains to a stop before making a movement over the crossing or drawbridge, the protection may be modified.

6. For both mechanically and power-operated plants, the apparatus shall be so constructed and circuits so arranged that the failure of any part of the system, affecting the safety of train operation, shall cause all signals affected to give the most restrictive indications that conditions require.

7. Signals of approved form shall be used, the indications being given by position, by lights of prescribed colour, or by both, and shall be placed either over or upon the right of, and next to, the track upon which train movements are governed, except on railways operated with current of traffic to the left, or where physical conditions require the location of the signals to the left of the track.

8. Semaphore arms that govern shall be displayed to the right of the mast, as seen from an approaching train.

9. Approach signals, unless inoperative, shall be power-operated. Home and dwarf signals shall be pipe-connected, unless operated by power. Dwarf signals may be used to govern train movements on all tracks other than main tracks. On main tracks they may be used to govern train movements against the current of traffic. Home signals shall be located not less than 500 feet from the nearest frog of crossing, junction, or the end of a drawbridge.

10. Approach and home signals shall be spaced at least stopping distance apart, with a minimum of 1,500 feet. Where not so spaced, an equivalent stopping distance shall be provided by two or more restrictive indications approaching the home signals.

11. All power-operated interlocking signals shall be equipped with indication locks, or the equivalent, designed so as to prevent the changing of the route unless the signal has displayed its most restrictive indication.

12. Locking of levers or arrangement of circuits shall be such that no signal can be cleared for any given route, unless the route is properly set.

13. Unless electric approach locking is provided, time locks shall be installed to prevent the changing of routes until after the home signal has displayed the " stop " indication a predetermined time.

14. Lever machines at mechanical interlocking plants shall be equipped with locking of the preliminary type.

15. At mechanical interlocking plants one lever shall operate not more than (1) one mechanical signal, (2) two single point or lifting block derails, (3) one lifting rail type derail, (4) two pairs of switch points, (5) one switch and lock movement with 55 feet of detector bar, (6) two eight-way bridge couplers, (7) four rail locks, (8) two bridge locks, (9) 110 feet of detector bar

at single switches, (10) 156 feet of detector bar at slip switches or movable point frogs, (11) any other combination of units the total load of which does not exceed the maximum specified for one lever.

16. Track circuit locking or equivalent (detector bar of approved design not less than 55 feet long) shall be applied to prevent operation of switches, derails, or movable point frogs underneath or directly in front of a train.

17. At manually operated interlocking plants, power switch operating and locking mechanism shall be provided with means to indicate that switch or corresponding interlocking unit has completed its movement and is locked.

18. At automatic interlocking plants, circuits shall insure proper co-relation of the units of the plant.

19. At mechanical interlocking plants, all mechanically operated facing point switches, derails, and movable point frogs in main tracks shall be locked with facing point locks. All other derails, switches, and units may be locked by facing point locks, or by switch and lock movements. Bolt locks shall be provided for facing point switches, derails, and movable point frogs if the signal governing the high speed route through them is mechanically operated.

20. When power-operated signals govern movements over switches, or corresponding interlocking units, switch control shall be used so that signals can give indication to proceed only when such units are in proper position.

21. At rail level crossings, where derails are required to be installed, they shall be located as follows:—

At single track crossings, not less than 500 feet each way from the crossing.

At multiple track crossings, with the normal direction of traffic, not less than 500 feet from the crossing; against the normal direction of traffic, not less than 300 feet from the crossing.

At junctions, derails, when required, shall be installed only on the converging tracks, with the normal direction of traffic, not less than 500 feet; against the normal direction of traffic, not less than 300 feet.

Measurements referred to above shall be taken from the nearest frog of crossing and frog of junction switch.

At single track drawbridges, not less than 500 feet each way from the ends of the drawbridge.

At multiple track drawbridges, with the normal direction of traffic, not less than 500 feet; against the normal direction of traffic, not less than 300 feet from the ends of the drawbridge.

22. Guard rails shall be laid on the outside of the rail in which the derail is placed, or on the inside of the opposite rail, and shall extend from the derailing point to within 100 feet of the crossing, junction point, or ends of drawbridge, parallel with and nine (9) inches from the track rail. Guard rails shall be fully spiked, and if placed between the track rails shall have the ends bent down level with the tops of the ties.

23. As soon as the installation is completed it may be placed in operation, but until an application for inspection is made to and an order received from the Board authorizing operation, all trains shall stop as required by the Railway Act.

24. If any deviation from these requirements is found necessary, a special application shall be made to the Board.

And it is further ordered:

2. That the regulations herein adopted shall become effective as and from the date of this order.

H. GUTHRIE,
Chief Commissioner.

GENERAL ORDER No. 548

In the matter of the General Order of the Board No. 362, dated April 19, 1922, prescribing regulations to be adopted by railway companies for the prevention of fires.

File No. 4741

WEDNESDAY, the 4th day of December, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

In pursuance of the powers conferred upon it by sections 34, 281, and 287 of the Railway Act, and of all other powers possessed by it in that behalf; upon reading the submissions filed by the Railway Association of Canada for the railway companies interested; and considering the representations made in their behalf at conferences held at Ottawa, June 14, 1932, October 5, 1932, and November 20, 1935; and upon the report and recommendation of the Chief Operating Officer of the Board,

It is ordered as follows:

1. That the following General Orders—

No. 4, dated July 3, 1907,
No. 5, dated July 4, 1907,
No. 8, dated August 13, 1907,
No. 9, dated August 14, 1907,
No. 13, dated July 30, 1908,
No. 51, dated December 15, 1909,
No. 63, dated August 2, 1910,
No. 88, dated February 16, 1912,
No. 90, dated April 11, 1912,
No. 91, dated May 22, 1912,
No. 107, dated July 4. 1913,
No. 126, dated May 28, 1914,
No. 141, dated April 15, 1915,
No. 362, dated April 19, 1922;

Orders

No. 9760, dated February 23, 1910,
No. 30911, dated April 19, 1921,
No. 32919, dated October 4, 1922,
No. 32920, dated October 4, 1922,
No. 33210, dated December 11, 1922,
No. 37402, dated March 15, 1926,
No. 38737, dated February 2, 1927,
No. 38834, dated March 14, 1927;

And Circulars

No. 132, dated March 20, 1914,
No. 133, dated May 5, 1914,
No. 147, dated January 26, 1916,
No. 148, dated March 24, 1916,

made herein, be, and they are hereby, rescinded.

2. That, unless exempted by special order of the Board, every railway company subject to the legislative authority of the Parliament of Canada, the railway of which is under construction or being operated, shall cause all locomotives and other portable boilers used on the railways to be fitted and kept fitted in good order with practical and efficient devices for arresting the escape of sparks or live coals, as hereinafter set out, and shall also be governed by the regulations as to inspections, patrols, fire guards, reporting and suppression of fires as outlined in the regulations herein.

3. The smokebox of every coal-burning locomotive used on the railway shall have installed therein, so as to extend completely over the aperture through which the smoke ascends, a double-crimped wire netting as follows:

(*a*) Square mesh not larger than $2\frac{2}{3}$ by $2\frac{2}{3}$ per inch of No. 10 B.W.G. wire. The condemning limits for the netting shall be when the opening is $^{19}/_{64}$ inch or the wire worn to ·065 inch in thickness.

(*b*) Oblong mesh not larger than $^{3}/_{16}$ inch in width and $\frac{3}{4}$ inch in length, of wire, Warp No. 10, Shute No. 9 B.W.G. The condemning limit for the netting shall be when the opening is $^{7}/_{32}$ inch in width and $^{25}/_{32}$ inch in length, or when wires are worn to ·065 inch in thickness.

(*c*) Oblong mesh not larger than $^{3}/_{16}$ inch in width and $\frac{1}{2}$ inch in length, of wire, Warp No. 10, Shute No. 9 B.W.G. The condemning limit for the netting shall be when the opening is $^{7}/_{32}$ inch in width and $^{17}/_{32}$ inch in length, or when wires are worn to ·065 inch in thickness.

(*d*) Square mesh not larger than 3 by 3 per inch of No. 10 B.W.G. wire. The condemning limit for the netting shall be when the opening is $^{15}/_{64}$ inch, or when wire is worn to ·065 inch in thickness.

(*e*) Square mesh not larger than 3 by 3 per inch of No. 11 B.W.G. wire. The condemning limit for the netting shall be when the opening is $\frac{15}{64}$ inch, or the wire is worn to ·06 inch in thickness.

(*f*) Baffle plates, table plates, diaphragms, manhole and superheater doors shall be fitted so that no openings in same shall exceed $\frac{1}{8}$ inch in width. Cement or asbestos shall not be used to fill in openings in such fire protective appliances. Such plates, doors, etc., shall be securely held in position by cotters or keys so constructed that they cannot fall out, and all fire protective appliances, netting, or plates shall be so securely fastened that displacement cannot occur by warping.

(*g*) Upon application from a railway company, tests or trials of fire protective devices other than as specified in this section may be made only on receipt of permission from the Chief Operating Officer.

4. In no case shall there be an opening in the ashpan body, hoppers, slides, or fittings thereof in excess of $\frac{1}{8}$ inch in width; and the condemning limit of openings on ashpan and hopper doors when closed shall be $\frac{1}{4}$ inch.

(*a*) Draught openings under foundation ring, in ashpans of wide firebox type, shall be protected by a coping, or hinged door, closed in at each end, and extending $2\frac{1}{2}$ inches above the level of the bottom of the foundation ring: Provided that where adequate protection by coping, or hinged doors, extending above the level of the bottom of the foundation ring, cannot be applied, inside deflectors extending four inches below the bottom of the foundation ring shall be installed, or a combination of outside and inside coverage of not less than four inches shall be used. Standard mesh netting equal to that required in the smoke-box may be used for the outside coping or hinge door where solid plate cannot be used.

(*b*) Draught openings in the side, front, or back of ashpans of wide or narrow type fireboxes, in which the hinged plate or coping is not used in accordance with paragraph 4 (*a*), shall be protected by solid deflecting plates providing a total of not less than $2\frac{1}{2}$ inches coverage, such deflecting plates to be closed in at each end. Standard mesh netting equal to that required in the smoke-box may be used for extra draught openings where solid deflecting plates cannot be provided.

(*c*) Draught openings of shallow ashpans shall be protected by standard smoke-box netting.

(*d*) Openings in ends of ashpans through which grate-rods operate shall be protected against the escape of ashes or fire;

grate-rods shall be carried in sliding plates with clearance around rods not to exceed one-sixteenth of an inch when new; the condemning limit shall be one-eighth of an inch; or openings must be protected against the escape of ashes or fire by installation of hoods or deflecting plates.

(*e*) Ashpan doors and slides shall be securely closed by a locking gear while locomotive is operated. Ashpan dumping gear shall be such that ashpans can be dumped only by a person standing on the ground. Air combustion tube openings and cleanout opening from cinder trap in front of brick wall or arch shall be adequately protected against the escape of fire to the roadway.

(*f*) A device, with all necessary accessories, shall be installed to provide an adequate supply of water to all hoppers and ashpans. Sufficient water to dampen ashes and extinguish fire falling from the grates must be supplied from April 1 to October 31, both inclusive, of each year, or during such additional period as may be required in any particular territory by the Chief Operating Officer.

5. All steam shovels, ditching machines, and pile drivers having exhaust in stack and burning coal shall be equipped with a wire netting in the smoke-box, in accordance with standards prescribed in Clause 3, or with a bonnet screen or double-crimped wire netting mesh device on the top of the smoke stack, as may be most practicable. All openings between the bonnet netting and the stack must be fitted so as to leave no opening larger than the mesh of the netting. The condemning limit of said netting shall be as prescribed in Clause 3.

6. On every locomotive burning oil as fuel, the following standards shall be observed:—

(*a*) In such territory as may be designated from time to time by the Chief Operating Officer, the smoke-box of every locomotive with the narrow type firebox used by the railway shall have installed therein, so as to extend completely over the aperture through which the smoke ascends, a double-crimped wire netting square mesh, not less than 4 x 4 per inch, No. 12 B.W.G. The condemning limit of openings shall be $\frac{10.5}{64}$ of an inch.

(*b*) Linings of firepan and firebox shall be maintained in good order. Not less frequently than at each roundhouse inspection, or prior to starting each trip, where there are facilities, the firebox shall be cleaned of any accumulation of fallen brick and loose carbonaceous material.

(*c*) All joints in the firepan and between the firepan and firebox sheets or foundation ring shall be maintained airtight.

(*d*) Openings in firepan shall be protected in such manner as to prevent the escape of matter likely to cause fire.

(*e*) Burner shall be maintained in proper adjustment and alignment, clean and free from leakage.

(*f*) Sand for sanding flues shall be free from inflammable matter.

7. All fire protective appliances on locomotives and other portable boilers shall at all times be maintained in good order. No employees of the railway shall do, or in any way cause, damage to the netting or other fire protective appliances on any locomotive or other portable boiler in service.

8. The railway company shall provide adequate inspection at terminal or divisional points where its locomotives, steam shovels, ditching machines, and pile drivers are housed and repaired, and at other points where equipment is in service and cause—

(*a*) An examination to be made at least once a week of all fire-protective appliances; providing that the ashpans and hoppers of every locomotive must be inspected prior to its starting on each trip.

(*b*) A record to be kept of the weekly inspection, showing for each of such equipment the number, the date and hour of day of every inspection, defects disclosed by such inspection, and all repairs made to fire-protective appliances. Such record to be kept open for inspection by any authorized officer of the Board.

(*c*) In case any of the said fire-protective appliances are found to be defective, the said equipment shall be removed from service, and shall not be returned to service unless and until such defects are remedied.

(*d*) The railway company shall make an independent thorough examination of the fire-protective appliances on all its locomotives, steam shovels, ditching machines, and pile drivers which are in service, at least once each month, and a record of the conditions disclosed shall be kept by the company, and a return of such record of inspection shall be submitted to the Board's Chief Operating Officer on the Locomotive Boiler Inspection and Report Form Nos. 1 and 2.

9. Fire, live coals, or hot ashes shall not be deposited upon the tracks or right of way, unless they are extinguished immediately thereafter, except in pits provided for the purpose. On no account shall ashes from passenger, boarding cars, or cabooses, nor clinkers from firebox of locomotives, be thrown out on the right of way while running. Burning or smouldering waste taken from hot boxes shall be immediately extinguished. Care should be taken in the handling of fusees and to avoid throwing them where fire can be communicated.

10. Unless otherwise ordered, no railway company shall, between April 1 and October 31, both inclusive, burn as fuel on its locomotives, steam shovels, ditching machines, and pile drivers any coal not possessing good coking properties, the use of which with standard front-end spark-arresting devices prescribed in Clauses 3 and 5 results in the emission of sparks from the stack to an extent deemed by the Board to be dangerous to the public interest, unless such equipment is provided with special spark-arresting device approved by the Board. Whether any particular coal possesses good coking properties shall be determined by certificate from the Mines Branch, Department of Mines, Ottawa.

11. Any railway or railways, any part or parts of which is or are constructed of, or upon, wooden trestles the whole of which cannot be seen from an approaching train for a distance of at least one thousand feet, do, during the months of April, May, June, July, August, September, and October of each year, provide, place, and keep a watchman, track-walker, fire alarm signals, ballast flooring, zinc covering over caps and intersections or approved fireproof paint, as hereinafter directed, for the purpose of protecting the said trestles from fire; each company having the option of adopting any of the said foregoing methods of protection.

12. That every such company shall cause to be placed and maintained at every trestle less than thirty feet in length one barrel of a capacity of at least forty-five gallons, and on trestles over thirty feet in length a like barrel, upon or near each end, with intermediate barrels of the like capacity not more than one hundred and fifty feet apart: Provided, however, that pile trestles over streams or other bodies of water need not be furnished with intermediate barrels.

13. That every such company shall cause the said barrels to be kept filled with water.

14. That every such company shall cause all brush and dead grass to be removed from beneath and around every such trestle, and shall cause its right of way crossed by such trestle to be kept free from combustible matter.

15. That, on or in the neighbourhood of timber lands, or in localities distant from settlement, every such company shall cause to be provided pails for use at all trestles, and all watchmen and track-walkers shall carry such pails while upon duty at trestles.

16. That, where the protection provided is by watchman or track-walker, all trestles on main lines shall be inspected at least twice each twenty-four hours, at intervals of not less than eight hours, and once every twenty-four hours on branch lines.

17. That, in the event of any such barrel or pail not being in good and efficient condition for holding water, every such watchman or track-walker shall forthwith repair or replace the same, or, if it cannot be done by him, he shall forthwith report such condition to his superior officer. Every such watchman or track-walker shall see that water barrels are at all times kept filled to within ten inches of the top, or forthwith report same to his superior officer. Every such watchman or track-walker, whenever any such trestle is injured by fire, shall, as soon as possible thereafter, report the same to his superior officer.

18. That the fire alarm signals be equal, in the opinion of an Engineer of the Board, to the Montauk Thermostat.

19. That if fireproof paint is used, one coat thereof, at least equal to the Clapp Fireproof Paint, be applied at least every five years.

20. That the ballast flooring be of gravel and be at least equal to the standard of the flooring adopted by the Great Northern Railway Company, plans of which are on file with the Board under file No. 4966, Case 1860. This flooring consists in a complete coating of gravel from beneath the head of the rail to the ties, extends laterally from outside guardrail to outside guardrail.

21. That if zinc or galvanized iron is used, the caps, stringers, and the outside of the batter posts of every such trestle, and, if the company desires, the ties, be covered with a zinc or galvanized iron covering.

22. That every such railway company failing or neglecting to comply with any of the provisions of Clauses 11 to 21, both inclusive, of this Order, shall be subject, in addition to any other liability which the said company may have incurred with respect thereto, to a penalty of thirty dollars.

23. That every such watchman or track-walker failing or neglecting to make inspection in accordance with Clause 16 of this Order, or failing or neglecting to make any of the reports he is required to make under Clause 17

hereof, or otherwise defaulting in any of the duties imposed upon him by this Order, shall be subject, in addition to any other liability which he may have incurred, to a penalty of fifteen dollars for each such failure or neglect.

24. That every such railway company shall cause every such watchman or track-walker to be furnished with a copy of this Order.

25. Between April 1 and October 31, both inclusive, of each year, the railway company shall take all reasonable precautions to eliminate the danger of fires being set by passengers and employees throwing burning smoking materials from trains. On open or mountain observation cars and on observation platforms, and in cars or compartments in which smoking is permitted, and the windows of which are not fully screened, suitable warning notices shall be prominently displayed (the notices on open observation cars and on observation platforms to be placed on the railing and not higher than three feet six inches above the floor). In addition, on all trains operating through National and Provincial Parks, Forest Reserves, and other forest territory, cuspidors or receptacles shall be placed on open observation cars, and/or mountain observation cars, and upon observation platforms where smoking is permitted.

26. That every such railway company establish and maintain fire-guards along the route of its railway as the Chief Operating Officer may prescribe. The nature, extent, establishment, and maintenance of such fire-guards shall be determined as follows:—

(*a*) The Chief Operating Officer shall from time to time prepare and submit to every such railway company a statement of the location and of measures necessary for establishing and maintaining the routes of such railways in a condition safe from fire, so far as may be practicable.

(*b*) Said measures may provide for the cutting and disposal by fire or otherwise of all or any growth of an inflammable character, and the burning or other disposal of debris and litter, on a strip of sufficient width on one or both sides of the track; the ploughing or digging of land in strips of sufficient width on one or both sides of the track; and such other work as may, under the existing local conditions and at reasonable expense, tend to reduce to a minimum the occurrence and spread of fire.

(c) Said statements of the Chief Operating Officer shall be so arranged as to deal with and prescribe measures for each separate portion of such railway upon and adjacent to which the fire risk calls for specific treatment. The intention shall be to adjust the protective measures to the local conditions, and to make the expense proportionate to the fire risk and possible damage.

(*d*) Said statements of the Chief Operating Officer shall prescribe dates on or within which the foregoing protective measures shall be commenced and completed, and the fire-guards maintained in a clean and safe condition.

(*e*) No such railway company shall permit its employees, agents, or contractors to enter upon land under cultivation to construct or maintain fire-guards without the consent of the owner or occupant of such land.

(*f*) Wherever the owner or occupant of such land objects to the construction or maintenance of fire-guards, on the ground that the said construction or maintenance would involve unreasonable loss or damage to property, the company shall *at once* refer the matter to the Board, giving full particulars thereof, and shall in the meantime refrain from proceeding with the work.

(*g*) No such railway company shall permit its agents, employees, or contractors to leave gates open, or to cut or leave fences down, whereby stock or crops may be injured, or to do any other unnecessary damage to property in the construction or maintenance of fire-guards.

27. That, in carrying out the provisions of Section 280 of the Railway Act, which enacts that "the company shall at all times maintain and keep its right of way free from dead or dry grass, weeds and other unnecessary combustible matter," no such railway company, or its agents, or contractors, between the first of April and the 31st of October, both inclusive, shall burn, or cause to be burned, any ties, cuttings, debris, or litter upon or near its right of way, except under such supervision as will prevent such fires from spreading beyond the strip being cleared. The Chief Operating Officer or other authorized officer of the Board may require that no such burning be done along specified portions of the line of any such railway, except with the written permission or under the direction of the Chief Operating Officer or other authorized officer of the Board.

28. That the railway company provide and maintain a force of fire rangers fit and sufficient for efficient patrol and fire-fighting duty during the period from the first day of April to the 31st day of October, both inclusive, of each year; and the methods of such force shall be subject to the regulations of the Board and be under the direction of the Chief Operating Officer or other authorized officer of the Board.

29. That the Chief Operating Officer each year shall prepare and submit to each and every railway company a statement of the measures such railway companies shall take for the establishment and maintenance of said specially organized force. Said statements, among other matters, may provide for,—

(*a*) The number of men to be employed on the said force, their location and general duties, and the methods and frequency of the patrol;

(*b*) The acquisition and location of necessary equipment for transporting the said force from place to place and the acquisition and distribution of tools and other equipment suitable for fire-fighting;

(*c*) Any other measures which are considered by him to be essential for the immediate control of fire and may be adopted at reasonable expense.

30. That every such railway company shall instruct and require its sectionmen and other employees, agents, and contractors to take measures to report and extinguish fires on or near the right of way as follows:—

(*a*) Conductors, engineers, or trainmen who discover or receive notice of the existence and location of a fire burning upon or near the right of way or of a fire which threatens land adjacent to the right of way, shall report the same by wire to the Superintendent, and shall also report it to the agent or persons in charge at the next point at which there shall be communication by telegraph or telephone, and to the first section employees passed. Notice of such fire shall also be given immediately by a system of warning whistles, or by such other method as may be approved by the Board.

(*b*) It shall be the duty of the superintendent, or agent, or person so informed to notify immediately the nearest forest officer and the nearest section employees of the railway of the existence and location of such fire.

(*c*) When fire is discovered, presumably started by the railway, such sectionmen or other employees of the railway as are available shall, either independently or at the request of any authorized forest officer, proceed to the fire immediately and take action to extinguish it: Provided such sectionmen or other employees are not at the time engaged in labours immediately necessary to the safety of trains.

(*d*) In case the sectionmen or other employees available are not a sufficient force to extinguish the fire promptly, the railway company shall, either independently or at the request of any authorized forest officer, employ such other labourers as may be necessary to extinguish the fire; and as soon as a sufficient

number of men, other than the sectionmen and regular employees, is obtained, the sectionmen and other regular employees shall be allowed to resume their regular duties.

(*e*) The provisions of this section shall apply to all fires occurring within three hundred feet of the railway track, unless proof shall be furnished that such fires were not caused by the railway.

(*f*) The provision with respect to extinguishing of fires shall extend to a point three hundred feet from the main tracks, except where a public road adjacent to the right of way parallels the railway tracks within a distance of three hundred feet, in which case fire shall be extinguished between the right of way fence and the driven portion of the roadway, providing that the railway company's forces shall follow fires which spread from the railway to and/or upon the lands to which they may spread.

31. The railway company shall forward promptly to the Chief Operating Officer of the Board at Ottawa a report on the approved form of every fire, other than such fires as are started by railway forces to clear the right of way and are confined within the right of way limits, in any National Park, Provincial Park, Forest Reserve, and/or forest territory burning an area of 100 square feet or more, originating within three hundred feet of the main tracks, or that burn into the company's right of way from adjoining lands, except property fires in the built-up portions of cities, towns, and villages. The probable cause of each fire should, if possible, be determined.

32. That every such railway company give particular instructions to its employees in relation to the foregoing regulations, and cause such instructions to be posted at all stations, terminals, and section tool houses along its lines of railway. In case said instructions are not also carried in employees' time tables during said prescribed period, or in "operating" and "maintenance of way" rule books, they shall, previous to April 1st of each year, be reissued to all employees concerned, in the form of special instructions. The Chief Operating Officer may waive the above requirements, in whole or in part, as to lines or portions of lines where, in his judgment, the fire danger is not material.

33. Fire reports submitted under this Order are declared to be privileged, and shall only be made public or given out upon application therefor by Order or direction of the Board.

34. These regulations shall not be deemed to be mandatory in respect of any fire which has not been caused by the railway, but the provisions of this section shall not relieve the railway companies from the duty of reporting and extinguishing fires as provided in section 30 hereof.

35. That every such railway company allowing or permitting the violation of, or in any respect contravening or failing to obey, any of the foregoing regulations, except Nos. 11 to 21, both inclusive, violations for which are by paragraph 22 of this Order made subject to a penalty of thirty dollars, be subject, in addition to any other liability which the said company may have incurred, to a penalty of one hundred dollars for every such offence.

36. That if any employee or other person included in the said regulations fails or neglects to obey the same, or any of them, except Nos. 11 to 21, both inclusive, violations for which are by paragraph 23 of this Order made subject to a penalty of fifteen dollars, he shall, in addition to any other liability which he may have incurred, be subject to a penalty of twenty-five dollars for every such offence.

H. GUTHRIE,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT BOARD OF RAILWAY COMMISSIONERS, FOR OCTOBER, 1935

Railway accidents..	204,	with 18	persons killed and	206 injured.
Railway accidents at highway crossings.	23,	with 7	persons killed and	28 injured.
	227	25		234

	Killed	Injured
Passengers.. .. ..

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXV Ottawa, January 15, 1936 No. 22

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Application of the Canadian National Railways for an Order granting leave to abandon operation of that portion of the Orono Subdivision, in the Province of Ontario, between Ronnac (M. 0·0) and Greenburn (M. 41·8), a distance of 41·8 miles.

File No. 39310.23.

Heard at Port Hope, Ont., May 21, 1935.

JUDGMENT

COMMISSIONER STONEMAN:

The Canadian National Railway applies under Chapter 47 of the Statutes of Canada 1932-33 for the approval of the Board to the abandonment of operation of its Orono Subdivision, in the Province of Ontario, between Ronnac (M. 0·0) and Greenburn (M. 41·8), a distance of 41·8 miles.

Before the year 1933, unless there was a statutory or contractual provision requiring a railway company to operate its road, it was at liberty to abandon the whole or any portion of its line. The statute above referred to, which amends the Railway Act by adding section 165A, provides that—

> "The company may abandon the operation of any line of railway with the approval of the Board, and no company shall abandon the operation of any line of railway without such approval."

Brief Historical Review

Opened for operation, 1911.

Built under the charter of the James Bay Railway Company, under the following statutory authority: Canada, 4-5, Ed. VII, Chap. 110, 1905.

This line was built by the Canadian Northern Ontario Railway Company (successor by change of name to the James Bay Railway Company, incorporated by Canada Act 58-59 V, Chap. 50). In 1914 the Canadian Northern Ontario Railway Company became part of the Canadian Northern Railway System, the control of which was acquired by the Canadian Government in 1917 and which is now operated as part of the Canadian National Railways.

The Orono Subdivision extends from Ronnac to Greenburn, a distance of 41·80 miles. In September, 1926, the portion of the line between Greenburn and Todmorden was dismantled. In August, 1923, the portion between Brighton and Coburg was abandoned and later dismantled. In November, 1925, the portion from Cobourg to Ronnac was dismantled.

The present train service is between Ronnac at Mile 0·00, to Brinlook Crossing, Mile 35·39.

WESTBOUND MIXED TRAIN, NO. 311, WEDNESDAY AND FRIDAY

Leave Ronnac 10.15 a.m. Arrive Brinlook Crossing 1.05 p.m.

EASTBOUND MIXED TRAIN, NO. 312, THURSDAY AND SATURDAY

Leave Brinlook Crossing 3.48 p.m. Arrive Ronnac 6.40 p.m.

The railway operating revenues for the year ending September 30, 1931, were $58,890; for the year ending December 31, 1933, they were $26,056; and for the year ending December 31, 1934, they were $28,028. The railway company's operating expenses (out of pocket only) for the same period were as follows:—For the year ending September 30, 1931, $87,904, for the year ending December 31, 1933, $53,648; and for the year ending December 31, 1934, $43,845. The loss for this three-year period amounted to $29,014 in 1931, $27,592 in 1933, and $15,817 in 1934.

The above figures are subject to some adjustment because of inclusion of the sum of $2,552 for the years 1930-31 and $1,593 for the year 1934 for divisional supervision. The 1934 figures also show an item for maintenance of way and structures which is approximately $220 per mile below the average out of pocket costs for the same item covering a period of six years. The explanation given by the railway for the low figure representing the above item for the year 1934 is that it has not maintained the line during the year 1934 as it should have done for continued operation. The important point, I think, with regard to the above figures is that substantial losses have been shown.

The territory served by this line is principally agricultural. There is a flour mill located about one and one-half miles from Greenburn and a gravel pit a short distance from Greenburn Station. The gravel pit has not been operated for two years, and it is evident from correspondence since the application was heard that there is no intention of renewing operation. At Orono there is a flour mill, a butter factory, and a forestry station, also a coal and lumber business.

Those opposing the application were very ably represented by Mr. Waddell of Orono. The objection to the application being granted was on the ground of additional cost in operation because of the longer haul to railway facilities.

Mr. Green, the owner of the flour mill near Greenburn, states that at present he has to haul one and one-half miles, and if the application were granted he would have to haul a distance of eight miles. I understand, however, that there is a station on the Canadian Pacific Railway some three and one-half miles south and west of Greenburn Station, which may be reached by municipal road. This mill at Greenburn, according to the evidence, has been in its present location for practically one hundred years. Prior to the advent of the railway line it was necessary to haul the material about six miles from the railway station. The forestry station at Orono, as well as the other industries mentioned above, would have a haul of approximately five miles to railway facilities if the application were granted. In so far as agricultural interests are concerned, objection to the application being granted is on the ground that a longer haul to railway facilities would be involved.

This is a case where the railway was constructed after the territory was settled, and if the application were allowed, the distance between the remaining east and west lines would vary from 16 miles near Port Hope to 6 miles at Greenburn. The territory is well served by good road. The road map shows that there is a hard-surfaced road, known as No. 2, located three miles south of the line under consideration at Greenburn, three miles south at Whitby, two and one-quarter miles south at Oshawa, three miles south at Bowmanville, three and one-quarter miles south at Newcastle, and five miles south at Newtonville.

No. 7 is a through hard-surfaced highway lying a considerable distance to the north and running from Peterborough in a northwesterly direction to Lindsay, thence west to Sunderland, thence south to Brooklin, and thence west to Greenburn and beyond. It is only between Brooklin and Greenburn, a distance of about eight miles, that it is anywhere near the line in question, being about three-quarters of a mile north. In addition to the hard pavement running north and south between Sunderland and Brooklin, there is a hard pavement running north and south between Port Hope and Peterborough, known as No. 28. Within the square formed by No. 2, No. 28, and No. 7, which are provincial highways, the territory is very well covered by improved gravel roads—one running east and west through Orono, another farther north running through Pontypool, and a third still farther north through Bethany. Also there are improved gravel roads running north from Oshawa, Bowmanville, Newcastle, and Welcome, to say nothing of the township road running east and west every mile and a quarter and north and south at shorter distances.

The evidence is conclusive as to the fact that excellent transportation facilities are provided by bus and truck. Bus and truck competition has been so effective that one witness states that practically 75 per cent of the live stock is shipped by truck, and another witness states that practically all the apples from the district destined to the city of Toronto are shipped by truck, and a substantial amount to Montreal by truck. Dairy products, small fruits, and eggs are practically all shipped by truck.

The passenger traffic, as shown by an exhibit filed, makes it clear that practically all passengers from the district are either using cars going to other railway lines or using bus services.

If the application were granted there would be little, if any, inconvenience to those whom the line serves, with the exception possibly of the few industries that have been mentioned. The evidence in this case is such that I think the application should be granted.

December 21, 1935.

The Assistant Chief Commissioner and Commissioner Norris concurred.

ORDER NO. 52610

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 165A of the Railway Act, for approval of the abandonment of operation of a portion of their Orono Subdivision, in the Province of Ontario, between Ronnac, Mile 0·0, and Greenburn, Mile 41·8, a distance of 41·8 miles:

File No. 39310·23.

THURSDAY, the 26th Day of December, A.D., 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Port Hope, May 21, 1935, in the presence of Counsel for and representatives of the Townships of Clarke, Orono, Darlington, and Hope, and the Town of Orono, F. L. Green appearing in person, and what was alleged,—

It is Ordered: That the abandonment of operation of a portion of the Applicants' Orono Subdivision, in the Province of Ontario, between Ronnac, Mile 0·0, and Greenburn, Mile 41·8, a distance of 41·8 miles, be, and it is hereby, approved.

H. GUTHRIE,
Chief Commissioner.

Application of the Canadian National Railways for an Order granting leave to abandon the operation of that portion of its Lakefield Subdivision, in the Province of Ontario, between Port Hope (M. 2·0) and Peterborough (M. 30·0)—a distance of 28·0 miles.

File No. 39310.20

JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

The Canadian National Railway applies to the Board under section 165A of the Railway Act, section 2, subsection 2 of the Canadian National-Canadian Pacific Act, 1933, and all other appropriate statutory provisions, for an order granting it leave to abandon operation on the following line of railway, namely, a portion of the Lakefield Subdivision, in the province of Ontario, between Port Hope (mileage 2) and Peterborough (mileage 30), a distance of 28 miles. In support of this application the applicant railway submits a statement setting forth a general description of the line; its special industrial relationship; its revenue and expenses for the year October, 1930, to September, 1931, and for the calendar year 1933; and analysis of the freight traffic for the same years, and a map of the territory. On request by the Board figures for 1934 were filed.

The railway was open for operation in 1856. It was built under the charter of the Peterborough and Port Hope Railway Company under the following statutory authority: Province of Canada Act 9 V. Chap. 109 of 1846. In 1854 the name was changed to the Port Hope, Lindsay and Beaverton Railway Co., which in 1882 became the Midland Railway of Canada. The Midland Railway

of Canada was leased to the Grand Trunk Railway Co. of Canada in 1884, and in 1893 amalgamated with that company. In 1923 the Grand Trunk Railway Company amalgamated with the Canadian National Railway Company.

It is stated by the railway that the line passes through a prosperous and fairly well settled farming district in which there is considerable stock raising. It is stated that King's Highway No. 28, a paved road, runs from Port Hope to Peterborough parallel to the line proposed for abandonment and there are improved cross-roads connecting with this main highway. Bus service, it is stated, is operated twice daily between Port Hope and Peterborough and trucking service for the transfer of cattle and farm produce is maintained between the various communities served, and also Port Hope, Peterborough and Toronto.

An inspection was made by the Board's officers, and subsequently a hearing was held at Peterborough by the Board.

The rails are principally 80-pound steel with some two miles of 100-pound steel laid in 1908-10. The steel is pretty well worn but it is in a safe condition. There are six steel bridges in fair condition which require considerable maintenance, and five timber trestles in poor condition. The culverts are in poor shape and if the line is maintained will, in many cases, have to be renewed. The ballast consists of cinders and gravel. It is light and pretty well worn out. Ties for the most part are untreated. Grades are heavy, being 2 per cent westbound (compensated) and 1·5 per cent eastbound. There is a daily passenger train service except on Sunday, and wayfreight mixed one trip per week. The present passenger train service on the Lakefield Subdivision, between Port Hope and Peterborough, is:—

Westbound—

No. 95, daily except Sunday, leaves Port Hope 4.10 p.m.
Arrives Peterborough 5.05 p.m.

Eastbound—

No. 92, daily except Sunday, leaves Peterborough 12.15 p.m.
Arrives Port Hope 1.15 p.m.

If cars of stock are loaded on other days of the week on the line, a switch engine is sent from Port Hope to bring these down to the main line.

The Motor Vehicles Branch of the Department of Highways advises that the Collacutt Coal Lines provide a bus service over the highway and that freight service by truck is afforded as follows: Beatty Bros., Peterborough, and the Toronto-Peterborough Transport of Toronto. It is stated that the Beatty Bros. give freight service also to Ronnac, Millbrook and Fraserville; freight service is given by S. Rowe of Port Hope to Quays, Perrytown and Campbellcroft.

In the year 1934 gross Canadian National Railways revenue were $21,064; total expenses are shown at $38,205; leaving a system loss of $17,041. For the year 1930-31 there was a total gross revenue of $56,750; with a total expense of $70,897; leaving a system loss of $14,147. These computations are independent of fixed charges. Expenses are out of pocket only.

The distribution of carload traffic between Port Hope and Peterborough on the Lakefield Subdivision is set out in statement on file by the railway. The outward traffic for the stations of Campbellcroft, Millbrook and Fraserville amounts to sixty-four cars; inward traffic seventy-two cars. The items moving outward on this carload traffic are potatoes, buckwheat, cattle, wheat, hogs, oats, peas, barley, lumber and scrap iron; inward the items are salt, peas, oats coal, cement, wood, road material, oil and fertilizer.

The following tabular summary sets out the carload traffic originating and terminating at Campbellcroft, Millbrook and Fraserville for 1934:—

CAMPBELLCROFT

No. of Months	Outward No. of Cars	Commodity	Inward No. of Cars	Commodity
12	5	Potatoes	0	Potatoes
	5	Buckwheat	0	Buckwheat
	3	Cattle	0	Cattle
	1	Wheat	0	Wheat
	2	Hogs	0	Hogs
	3	Oats	2	Oats
	4	Peas	1	Peas
	2	Barley	0	Barley
	0	Salt	2	Salt
	0	Coal	3	Coal
	0	Cement	3	Cement
	Total 25		Total 11	

MILLBROOK

No. of Months	Outward No. of Cars	Commodity	Inward No. of Cars	Commodity
12	2	Wheat	3	Wheat
	2	Oats	4	Oats
	10	Barley	2	Barley
	1	Peas	0	Peas
	17	Cattle	1	Cattle
	0	Anthracite coal	28	Anthracite coal
	0	Bituminous coal	1	Bituminous coal
	0	Coke	2	Coke
	0	Salt	3	Salt
	0	Cordwood	2	Cordwood
	3	Lumber	0	Lumber
	0	Cement	1	Cement
	0	Road Building Material	1	Road Building Material
	3	Scrap Iron	0	Scrap Iron
	Total 38		Total 48	

FRASERVILLE

No. of Months	Outward No. of Cars	Commodity	Inward No. of Cars	Commodity
12	1	Cattle	3	Oats
	1	Peas	1	Salt
			6	Oil
			1	Coal
			1	Fertilizer
	Total 2		Total 12	

The average journey per revenue passenger on branch traffic only is 10·19 miles; in the case of Peterborough 13·44 miles. Millbrook shows total traffic at 34·10 miles. These figures are based on the agent's sales. Conductor's sales show Port Hope branch traffic only 19·15 miles; Quays, 7·47; Perrytown, 8·85; Campbellcroft, 10·97; Carmel, 15·58; Millbrook, 12·23; Fraserville, 8·27; and Peterborough, 13·19.

The population tributary to the railway is shown: Port Hope, 2,776; Monaghan North, 3,359; Monaghan South, 725; Cavan, 2,106; making a total of 8,966. The town of Port Hope has a population of 4,723; Peterborough city, 22,327; and Millbrook, 663.

It was claimed that the Port Hope line was not getting the full advantage of its traffic, reference being made to the traffic being handled by the Belleville line on a longer mileage. Counsel for the railway said that where the interests

of operating efficiency have called for it freight has been carried over the Belleville line from Peterborough and over the direct line from Peterborough to Toronto rather than by way of Port Hope. He claimed that it was in the interests of railway operation that the heavier density traffic lines should be used as far as possible.

Mr. Milton J. Fallis was called by counsel for Millbrook. Mr. Fallis in evidence at p. 1598 testified that he specialized in cattle feeding business; that last year he had delivered to Millbrook for shipment by rail about thirty-three head of cattle. The rate at that time was 19 cents by rail. It cost 35 cents to truck into Toronto. Mr. Fallis stated that one of the main reasons why the trucking business took from the railroad from 1931 up to last year was owing to the bad conditions of the markets.

On cross-examination Mr. Fallis stated (evidence p. 1599) that in the past few years 75 per cent of the cattle had been handled by truck, but that now the situation is changed and there is an increase on cattle handled by the railway.

Mr. W. A. Wood of Cavan township gave evidence (evidence, p. 1618). He had shipped cattle since 1921, these shipments being from Fraserville. From 1921 until about 1928 he averaged a carload of stock a week in the shipments, then prices dropped and trucks came in. He said he had to admit that the trucks had done a certain amount of damage to the railways, but did not think local trucks were hurting them that way. The local trucks draw to the railways. Stated he had a truck himself, but had never trucked to Toronto. He stated no person could truck to Toronto with a profit. At one time there were about six trucks operating in the township of Cavan drawing live stock as well as other things; to-day there is one within the township engaged in this traffic. Continuing, Mr. Wood said: "Now that goes to show, gentlemen, that the truck business is not profitable in my estimation because they are dropping off. While the new truck lasted people could continue but when the new truck ran out they were not able to buy another. Therefore, I think that our railroads will come back and get the business. If the railroad is taken away we will have practically no outlet. If we are left to the mercy of the truck drivers and operators, what is it going to cost us? It is going to be very detrimental to the farmers of Cavan."

Mr. J. A. Waddell (evidence p. 1625) testified that he conducted a small coal business at Campbellcroft and managed the grain elevator there for Mr. Dewar. He stated that if the railway is closed he would have to abandon business entirely. Campbellcroft is about ten miles from Port Hope, the nearest railroad point. Mr. Waddell stated: "We are three miles west of the highway, No. 28, and a mile from the gravel road that he (railway representative) spoke of. Now coal is a thing that is used in the winter, and if the people were in a position to buy all their coal in the fall all would be well, we could have it trucked in from Port Hope. But our road from Campbellcroft to the highway is a county road, only gravel, which they refuse to keep open in the winter, and the road to the west that he spoke of connecting from Welcome to Millbrook is the same type of road, a gravel road, which is very often closed from Christmas to April, especially the section between Garden Hill and Millbrook. It is a winding road among the hills and fills in with snow badly, and our county council refuses to do anything towards keeping it open."

There is lack of unanimity in regard to the condition of the highways and in regard to competition. For example, between Port Hope and Peterborough there was a train service in 1930 of six trains daily. The service has declined since then. It is admitted that private-owned motor cars are to some extent responsible for the change. It is set out, however, that the buses are not responsible at Millbrook because the nearest bus line is five miles away. It was explained by counsel for the railway that the Campbellcroft district west

of the railway was served by a first-class gravel highway running southerly through Perrytown, Garden Hill and Canton, and southerly to Port Hope. It was also set out that from Millbrook to Port Hope or to Peterborugh there was a paved highway, and direct road highway communication between Millbrook and Peterborough and Port Hope. The station at Fraserville is said to be within two or three miles of the station at Kendal on the Canadian Pacific Railway line running from Peterborough. Millbrook is within four miles of the station at Cavan, and to Cavan there is said to be a first-class gravel highway.

While the railway emphasizes truck competition, and while reference is made by counsel for Millbrook to the efficient competition by truck, there is a diversity of opinion in the evidence set out. Mr. Corkery, solicitor for Peterborough, claimed that the trucks are not now as efficient competitors as they once were, this being on account of depreciation not being properly taken care of.

Counsel for the village of Millbrook, at p. 10 of his brief, makes some comments on the availability of highway No. 28. This runs from Port Hope to Peterborough. Millbrook is connected with this highway by a paved road four miles in length. The distance from Millbrook to Port Hope by road is twenty-one miles; Peterborough sixteen miles. As stated, the road connecting the highway with Millbrook is simply the old gravel road with a paved surface. It is narrow, and at present it is not in good repair. This road will not bear heavy trucks as it has not a suitable foundation. It will carry only passenger and light commercial vehicles. In the winter time it is often closed to traffic, and always is in a dangerous condition due to the large quantities of snow and ice which accumulate on it. This paved road runs eastward from Millbrook. There is a gravel road running southward from Millbrook to Port Hope and northward to Lindsay. This road is totally unsuitable for motor trucks and in the winter it is completely impassable for any kind of traffic.

It will appear from what is above set out that there is a very considerable diversity of opinion. Just what the competition of trucks is and what they are doing at present was not adequately developed.

I do not think the railway has made out a case in regard to truck competition, and I am of opinion that the application fails.

December 27, 1935.

Commissioners Norris and Stone concurred.

ORDER No. 52621

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 165A of the Railway Act, for approval of the abandonment of operation of a portion of the Lakefield Subdivision, in the Province of Ontario, between Port Hope, Mile 2·0, and Peterborough, Mile 30·0, a distance of 28·0 miles.

File No. 39310.20

TUESDAY, the 31st day of December, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Peterborough, May 28, 1935, in the presence of counsel for the applicants, the city of Peterborough, town of Port Hope, and village of Millbrook, and what was alleged; and upon reading the further written submissions filed,—

It is ordered: That the application be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

Application of the Corporation of the City of Hamilton, Ontario, for an Order apportioning the cost of the new high level highway bridge over the Desjardins Canal, at York Street, in Ordnance Survey on Burlington Heights, City of Hamilton, between City of Hamilton, the Toronto, Hamilton & Buffalo Railway Company, Canadian Pacific Railway Company, Canadian National Railways, Bell Telephone Company, and Desjardins Canal Company, or Department of the Government representing the Crown and said Canal Company; said cost having been reserved by paragraph 3 of Order of the Board No. 47196, dated August 11, 1931.

(File No. 20161.2)

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER:

This application was originally made by the Corporation of the City of Hamilton on April 21st, 1931, to authorize the construction of a new high level highway bridge over the Desjardins canal, at York street, in the city of Hamilton, and for the apportionment of the cost of the said bridge as between the applicant, the Toronto, Hamilton and Buffalo Railway Company, the Canadian Pacific Railway Company, the Canadian National Railways, the Bell Telephone Company of Canada, and the Desjardins Canal Company, or the Department of the Government representing the Crown and the said Canal Company.

On 11th of August, 1931, by Order No. 47196 the Board authorized the construction of this bridge, and the question of the apportionment of the cost was allowed to stand until after the completion of the work.

The present application was heard by the Board on December 10th instant. At the hearing the following interests were represented by counsel, namely: the Corporation of the City of Hamilton, the Toronto, Hamilton and Buffalo Railway Company, and the Canadian Pacific Railway Company, no one appearing on behalf of the Canadian National Railways, the Bell Telephone Company of Canada, the Desjardins Canal Company, or the Government of Canada.

At the opening of the hearing on 10th instant it was announced by counsel for the Corporation of the City of Hamilton that the city abandoned any claim for contribution in respect of the above work from the Canadian National Railways or from the Bell Telephone Company of Canada, and stated that a satisfactory settlement or arrangement had been made with the latter company in respect of the said works, and that the city of Hamilton considered that the Canadian National Railways had no interest in the work and should not be asked to contribute.

The Department of Public Works filed with the Board a notice disclaiming any interest in or liability in respect of the said work, and intimated that they would not appear on the application. It was intimated by the Board at the hearing that as the Desjardins canal is now under the control of the Government of Canada, the Board has no jurisdiction to make any order against the Crown represented by the Department of Public Works and this aspect of the matter was not further considered.

The Desjardins Canal Company was authorized to construct a canal by an Act of the Parliament of Upper Canada in the year 1826, and under the terms of this Act the canal so constructed was to revert to the Crown at the end of fifty years. Reversion to the Crown took place in the year 1876, since which date the canal has been under the jurisdiction of the Government of Canada although the management of the canal seems now to be vested in the town of Dundas pursuant to legislation passed by the Parliament of Canada in the year 1876.

The Desjardins canal crossed certain highways in the neighborhood of the city of Hamilton which were in existence as highways before the year 1826. These highways were then privately owned and known as "toll roads," and formed practically the only means of communication in early times between Hamilton, Toronto and other points. The canal company erected swing-bridges where the canal crossed these highways, and these bridges were replaced from time to time by the canal company as occasion required.

About the year 1852 the Great Western Railway Company proposed to carry its railway across the canal, and an arrangement was made between the railway company and the canal company under which certain portions of the old canal channel were filled up, and it was agreed that a new channel should be cut for the canal directly through Burlington Heights, at York street as it now is in the city of Hamilton, and at some distance east of the former canal channel, and this arrangement was subsequently ratified by an Act passed by the Parliament of Canada in 1852.

Under an agreement between the canal company and the railway company, the railway company constructed the new canal through Burlington Heights cutting a channel through York street as it now is in the city of Hamilton.

In the year 1896 application was made to the Railway Committee of the Privy Council by the Toronto, Hamilton and Buffalo Railway Company for approval of plans and profiles of portions of its railway to be constructed in and through the city of Hamilton across the said canal and across certain toll roads which were owned by the Hamilton and Milton Road Company. This application included the construction of a high level bridge over the canal to replace the bridge which then existed at York street, and by Order dated December 4, 1896, the construction of the said bridge was duly authorized by the Railway Committee of the Privy Council. This order was superseded and rescinded by a subsequent Order of the Privy Council dated June 9, 1897.

It is to be noted that the last mentioned order of the Railway Committee of the Privy Council was passed as a result of an arrangement or agreement which had been arrived at between the Corporation of the City of Hamilton, the Toronto, Hamilton and Buffalo Railway Company and the Hamilton and Milton Road Company in respect of the construction and maintenance of the bridge, and the said order in this respect is as follows:—

Order.

"The Toronto, Hamilton and Buffalo Railway Company, hereinafter called the "T. H. & B." having under clauses 187 and 188 of the Railway Act applied to the Railway Committee of the Privy Council of Canada for approval of plans and profiles of portions of its railway to be constructed across Garth, Main, King, Ardvorlich, Hunt, Jones and Ordnance streets, and the Hamilton and Milton Road Company's roads, all in the City of Hamilton, and the Corporations of the City of Hamilton and the County of Wentworth as well as the Hamilton and Milton Road Company having been duly notified of the said application and they and the T. H. & B. having respectively appeared by Counsel and been heard at a meeting of the said Committee held on the 19th and 20th of February last—The said Committee *with the consent of all the said parties* and with the sanction of His Excellency the Governor in Council (O.C. No. 7089), orders and directs as follows:—

"The said plans and profiles of the said several crossings are hereby approved of as shown on the plans submitted with the said application, File No. 6455, and the T. H. & B. may make the said crossings, all the said parties being hereby ordered to fulfil and observe the following conditions, that is to say:—

"1. The T. H. & B. shall build, at its own cost, a high level bridge over the Desjardins Canal for the purpose of connecting the highways along York street as shown on the plan hereto attached marked "A," *the said bridge* to be not less than 24 feet in width and the live load shall be Class 1, Clause 37 of the Central Specifications for bridges, 1896, Department of Railways and Canals, and to be built to the satisfaction of the Government Chief Engineer of Railways and Canals, *and to become the property of the City of Hamilton,* the same to be completed on or before the first day of June, A.D. 1897, or such day, if any, as the Honourable the Minister of Railways and Canals may in writing consent to; and the T. H. & B. shall at its own cost construct the approaches to the said high level bridge to be constructed as aforesaid, and to the satisfaction of the Government Chief Engineer of Railways and Canals.

"2. *The said bridge and the highways* which it will connect *are to be maintained by the Municipality, in which they are situated* free of all charges or tolls to the public for travelling thereon.

"3. All the highways and toll roads shown between the points A and B, C and D, and E and F, on the said plan hereto attached are to be closed in the manner and to the extent hereinafter mentioned, as soon as the high level bridge is built and the approaches are constructed as aforesaid, and such bridge and approaches and the high level road over Burlington Heights are open for public traffic. Until that is done such highways and toll roads may be used as such, and the Hamilton and Milton Road Company may continue to collect such tolls as it is legally entitled to until the full sum of sixty thousand dollars is paid in to the credit of the Railway Committee of the Privy Council of Canada for the purposes of this Order by the three several parties required by this Order severally to pay the sum of twenty thousand dollars each to the Hamilton and Milton Road Company, as hereinafter provided, in extinction of their toll road rights and privileges free from incumbrances thereon made by the Hamilton and Milton Road Company.

"And after such payment by the several parties aforesaid, the right of the Hamilton and Milton Road Company to collect tolls on any portion of their roads shall cease and become absolutely extinct.

"4. The T. H. & B. may operate its railway across the highways immediately north of the Desjardins Canal at rail level until the high level bridge on the line of York street is built as aforesaid, and such highways are closed, such temporary crossings at rail level to be protected by the T.H. & B. in each case in such manner as the Government Chief Engineer of Railways and Canals may think best.

"5. The Hamilton and Milton Road Company is to receive the sum of $60,000 in exchange for the renunciation of its right to collect tolls upon its said highways and toll roads and of every part thereof, and for all its right, title and interest in all the roads belonging to the Company, and for all its claims and demands for compensation or damages arising out of the construction and operation of the railway of the T. H. & B. and the exercise of the powers granted for said railway, and all the works and acts of the said T. H. & B. and its contractors, agents and workmen.

"6. The sum of $20,000 which has been paid in by the Corporation of the City of Hamilton to the credit of the Railway Committee of the Privy Council of Canada, shall be paid to the Hamilton and Milton Road Company upon its executing a conveyance to the City of Hamilton free of all incumbrances, of all its right, title and interest to those portions

of its roads which are situated within the City, and upon the delivery to the City of all the title deeds and evidences of title in the custody, possession or control of the Road Company relating to said portions of its roads and its executing and delivering a conveyance to the County of Wentworth as provided in the next clause 7, hereinafter contained, and after such payments, such portions of said roads within the City as do not form part of the original high level roads over Burlington Heights shall not be kept open or used as public highways, after the high level bridge over the Desjardins Canal has been completed and opened for traffic and that portion of the high level road consisting of one chain at each end of the high level bridge has also been reopened.

" 7. Upon the completion of such high level bridge over the Desjardins Canal and upon the high level roads over Burlington Heights being completed and opened for traffic the Hamilton and Milton Road Company may take down and remove the present bridge and its approaches and abutments erected by it on the low level over the Desjardins Canal, and may retain for its own use all the material therein, and shall be absolved from all further obligation or liability to maintain a bridge over the Desjardins Canal, and the said Hamilton and Milton Road Company may after their right to collect toll has ceased, remove their toll house from the said highway.

" 8. The sum of $20,000, which has been paid in by the county of Wentworth to the credit of the Railway Committee of the Privy Council, shall be first applied to the paying off of all mortgages and interest thereon of the said toll roads given by the said Hamilton and Milton Road Company to any party or parties whomsoever, and the balance only to be paid to the said Hamilton and Milton Road Company after the satisfaction of all such incumbrances and after a proper conveyance free from all incumbrances made thereon by the Hamilton and Milton Road Company has been given to the County of Wentworth of all its right, title, interest, claim and demand in those portions of the Hamilton and Milton Road Company's toll roads, which are situate outside the limits of the city of Hamilton, and after the said Hamilton and Milton Road Company shall have delivered up to the said county of Wentworth all the title deeds and evidences of title to said portions of its roads which are in the possession, custody or control of said Hamilton and Milton Road Company or of any person or corporation for them and such roads, when so conveyed, shall be roads and highways within the meaning of the Act passed by the Legislative Assembly of the province of Ontario in the 55th year of Her Majesty's reign, entitled the Consolidated Municipal Act, 1892, and shall be subject to the provisions in said Act and the amendments thereto respecting roads and highways, and shall be maintained in accordance with the provisions of said Act, except that the said roads shall be kept free of all charges or tolls to the public for travelling thereon.

" 9. The sum of $20,000, which has been paid in by the T.H. & B. to the credit of the Railway Committee of the Privy Council of Canada, shall be paid over to the Hamilton and Milton Road Company as a part of the $60,000 to be received by the said Hamilton and Milton Road Company, as hereinbefore mentioned, after the execution and delivery of the conveyances aforesaid to the city of Hamilton and the county of Wentworth respectively, and on payment of the said $20,000 together with the sum of $200 to be paid by the T.H. & B. for costs, the Hamilton and Milton Road Company shall release the T.H. & B., their successors

and assigns from all claims, demands and causes of action whatsoever in respect of the construction of the said railway upon or across its roads or lands or of any trespasses thereon or destructions thereof or the building of the high level bridge over the Desjardins Canal or the re-opening of the high level road over Burlington Heights or the obstruction or closing of the roads of the Hamilton and Milton Road Company and the exercise of the powers granted for the railway, and shall discontinue all actions now pending against the said T.H. & B.

"And the said Hamilton and Milton Road Company shall convey, assure, transfer and release unto the T.H. & B., its successors and assigns all the right, title, interest, property claim and demand of the said Hamilton and Milton Road Company in, to or concerning the lands coloured red on the plan hereunto annexed marked "B."

"10. The interest accrued or which may accrue upon the sum of $20,000 paid into the bank by the city of Hamilton to the credit of the Railway Committee of the Privy Council from the time that the same was so paid in until it is paid over to the Hamilton and Milton Road Company shall belong to and be paid over to the city of Hamilton; and the interest upon the sum of $20,000 paid into the bank to the credit of the Railway Committee of the Privy Council by the county of Wentworth, from the time that the same was so paid in until it is paid over to the Hamilton and Milton Road Company, shall belong and be paid over to the county of Wentworth; and the interest upon the sum of $20,000 paid into the bank to the credit of the Railway Committee of the Privy Council by the T.H. & B. from the time that the same was so paid in until it is paid over to the Hamilton and Milton Road Company, shall belong to and be paid over to the solicitors of the said T.H. & B.

"The said Committee, in pursuance of authority given by the Clause 18 of the Railway Act, hereby rescinds its order dated the 4th of December, 1896, File No. 6718.

"(Sg'd) AND. G. BLAIR,
"Chairman."

"OTTAWA, June 9, 1897."

The Toronto, Hamilton and Buffalo Railway Company duly paid the sum of $20,000, being its share of the amount awarded to the Hamilton and Milton Road Company under the said order, and thereafter erected the bridge according to plans which were duly approved, and paid the whole cost thereof. The city of Hamilton became the owner of the said bridge and highway and was charged with the maintenance thereof under the terms of the said order. The cost of the bridge was approximately $17,000. Since construction, the bridge has always been maintained by the city of Hamilton. Neither the Toronto, Hamilton and Buffalo Railway Company nor the Canadian Pacific Railway Company has ever paid anything on account of maintenance or repairs of the bridge since its final completion. The Canadian Pacific Railway Company operates its trains over the tracks of the Toronto, Hamilton and Buffalo Railway Company under this bridge under the terms of an agreement whereby the Canadian Pacific Railway Company has obtained running rights over the lines of the Toronto, Hamilton and Buffalo Railway Company, but the ownership of the right of way is vested in the Toronto, Hamilton and Buffalo Railway Company. The bridge erected in 1897 continued to serve the traffic upon the highway until the new high level bridge, which is the subject of the present application, was opened for traffic about the year 1932.

In or about the year 1927 the city of Hamilton caused a survey of the then bridge structure to be made by an expert who was appointed by the city for the

purpose. The report made by the expert to the city of Hamilton in regard to the bridge was not placed before the Board at the hearing, but certain extracts from the report were mentioned by counsel for the city of Hamilton and cross-examination of witnesses took place in respect thereof. It is evident from such portions of the report as were brought to the attention of the Board that the expert appointed by the city of Hamilton was of opinion that the bridge structure was considerably out of repair, and an opinion was expressed by him that the bridge would have to be replaced by a more modern structure within two or three years at most.

It would appear from what transpired at the hearing that about the year 1928 or 1929 the city of Hamilton had under contemplation a civic improvement scheme upon an extended scale which involved, among other things, extensive improvements to the highway upon which the bridge of 1897 was situate. This project involved the widening of the highway from 30 feet to 70 feet in the vicinity of the bridge, and it was deemed essential by the city authorities that a new high level bridge of a width of 70 feet should be included in the general improvement scheme to accommodate the greatly increased motor and truck traffic over this highway and bridge. The development of motor and truck traffic had enormously increased since the erection of the bridge in 1897.

It seems clear that the desirability or necessity for an improved or enlarged high level bridge did not arise through any request by either of the railway companies concerned, nor did it arise by reason of the use, or operation, or requirement of either of the railway companies, nor has the new high level bridge furnished any increased facilities or conferred any benefits upon the railways so far as has been disclosed at the hearing.

In December, 1929, by resolution of the Corporation of the city of Hamilton a bridge engineer was employed to prepare plans for a modern high level bridge to take the place of the bridge erected in 1897, and application was made to this Board for approval of plans and apportionment of the cost, as hereinbefore set out.

The bridge constructed in 1897 was 24 feet in width and provided a roadway of 20 feet and a sidewalk of 4 feet, which was considered satisfactory for the traffic which existed on the highway in 1897, at which time the roadway itself was 30 feet in width. The new bridge recently erected is 70 feet in width and provides a roadway of 54 feet in width and two sidewalks of 8 feet each, and it is to be noted that the present highway leading to and from, the bridge is also 70 feet in width. This highway forms the main thoroughfare between Toronto and Hamilton and points in the northern part of the province and carries, perhaps, the heaviest road traffic which is to be found in any part of Canada. It is also to be noted that another bridge, approximately half a mile northwest of the new high level bridge and known as bridge No. 5, over the Canadian National Railway, has only a width of 30 feet for traffic and 12 feet for sidewalks, and that the highway at the point where it crosses bridge No. 5 is only 30 feet in width, and it is contended that the width of this bridge and the highway adjacent thereto is a controlling factor as to the traffic which may now pass over the new high level bridge.

According to the engineer who designed the new level bridge and who had charge of its construction, the total cost of the bridge for which contribution is sought is $518,582.51. For the purpose of the present application it will not be necessary for the Board to consider the various items which make up this total cost, nor will it be necessary to consider whether the bridge which has been constructed is more costly than was necessary under the circumstances. The above item of cost includes a sum of $150,000 for the construction of a temporary or detour roadway for use during construction of the bridge, but as a matter of fact this roadway was really projected as a permanent roadway

of the city of Hamilton and has since been adopted, improved and maintained as such. The whole question of the amount involved will remain open for future consideration should it become necessary to reconsider the matter later on.

Under the terms of the Order in Council of July 6th, 1897, whereby the bridge became the property of the city of Hamilton, and which order still remains in force, the City was to maintain the bridge at this point.

In my opinion, the obligation "to maintain," when no words of limitation or restriction are employed, involves an obligation to reconstruct up to the standard of the original structure should it become necessary at any time so to do

See G.T.R. Co. v. C.P.R. Co., 15 C.R.C. 433;
Brantford v. C.N.R., 39 C.R.C. 335, at pp. 238 and 239;
Dept. of Public Works of Ont. v. C.P.R. 30 C.R.C. 5;

But section 264 of the Railway Act appears to carry the obligation "to maintain" a step further. Section 264 reads as follows:—

> "Every structure by which any railway is carried over or under any highway or by which any highway is carried over or under any railway, shall be so constructed, and, at all times, be so maintained, as to afford safe and adequate facilities for all traffic passing over, under or through such structure."

Under the provisions of this section the Board has determined in many cases that where reconstruction of bridges has become necessary, the new structure must be suitable to any new traffic conditions which may have arisen, so as to afford at all times safe and adequate facilities for all the traffic passing over them.

The following decisions of the Board may be referred to in this respect:—

King Street Bridge, Hamilton, 25 C.R.C. 379;
Main Street Bridge, East Toronto, 25 C.R.C. 344 and 34 C.R.C. 119;
City of Windsor v. C.P.R. Co., 32 C.R.C. 26;
St. Paul Street Bridge case, St. Catharines, Board's Judgments, Vol. 10 (1920), p. 382; and
County of Essex v. M.C.R.R., 30 C.R.C. 428, at p. 432.

At the conclusion of the hearing of this case counsel for the city of Hamilton asked leave to submit a written argument in regard to the question of the maintenance of the bridge. Mr. Bell, K.C., and Mr. Polson, K.C., counsel for the city of Hamilton, have since submitted a joint argument, in writing, as supplementary to the argument made by them at the hearing. They submit that the term "maintain" as used in paragraph 2 of the Order in Council of June 9, 1897, had reference only to the maintenance of the bridge as free from tolls, etc. They contend that the word "maintain" has no reference to the physical condition of the structure, but only to the public user of it as a bridge free from tolls and charges. They have cited from "The King's English Dictionary" a number of definitions of the word "maintain," such as "to hold or keep in any state; to sustain; to preserve; to keep up; etc." In my opinion such definitions apply rather aptly to the physical condition of the bridge and would not apply to a question of the user or freedom from tolls. The exact language employed in paragraph 2 is as follows:—

> "2. The said bridge and the highways which it will connect are to be maintained by the municipality in which they are situated free of all charges or tolls to the public for travelling thereon."

This paragraph applies to both the bridge and the adjacent highways, and the obligation to maintain is placed upon the municipality in which the same happens to be situated.

In addition let me again point out that the ownership of the bridge was definitely granted to the city of Hamilton by paragraph 1 of the same order. The fact that the city of Hamilton owns the bridge and highway adjacent thereto would, under the law of the province of Ontario, place the maintenance of both bridge and highway upon the city of Hamilton unless there was special provision in regard thereto. The word "maintain" when used in regard to municipal roads and bridges is a common and well understood term, and I think in the present instance it applies to the physical condition of the bridge and the road. It is possible that it might apply both to the physical condition of the road and bridge and to the user of same by the public, but it is certain that it is not limited to the user.

Reference should also be made to section 39 of the Railway Act, which is as follows:—

> "39. When the Board, in the exercise of any power vested in it, in and by any order directs or permits any structure, appliances, equipment, works, renewals, or repairs to be provided, constructed, reconstructed, altered, installed, operated, used or maintained, it may, except as otherwise expressly provided, order by what company, municipality or person, interested or affected by such order, as the case may be, and when or within what time and upon what terms and conditions as to the payment of compensation or otherwise, and under what supervision, the same shall be provided, constructed, reconstructed, altered, installed, operated, used and maintained.
>
> "2. The Board may, except as otherwise expressly provided, order by whom, in what proportion, and when, the cost and expenses of providing, constructing, reconstructing, altering, installing and executing such structures, equipment, works, renewals, or repairs, or of the supervision, if any, or of the continued operation, use or maintenance thereof, or of otherwise complying with such order, shall be paid."

Under this section the Board is vested with a discretion to apportion as between the various parties interested the cost of the reconstruction which has taken place in the case under discussion. In a great many cases the Board has seen fit to apportion the cost of the work as between the railways and the municipalities concerned, where it has been made to appear that the various parties have been benefited, or their rights protected and conserved.

The present application raises rather pointedly a question of much concern both to the railway companies and to the public in general, namely, the rapid and increasing development of both freight and passenger traffic by means of motor-truck and motor-car in direct competition to the railways. There can be little doubt that the enormous development of this traffic in recent years constitutes the main reason for the enlargement of the high level bridge and the expansion of York street in the city of Hamilton. Provision must certainly be made to take care adequately of this traffic, and it is generally believed that in the future motor car and truck traffic will increase rather than diminish. There can be no doubt that the competition of motor car traffic is a very serious matter for the railways, and I think it would be most unreasonable to ask either of the railways concerned in this application to make a contribution to a work which will undoubtedly tend to increase the competition to which they are subjected, both in regard to passenger and freight traffic.

I have been unable to discover any sound reason for apportioning any portion of the cost of the York street bridge structure to the railway companies, and I think, under the circumstances of this case, the Board should exercise its discretion under section 39 of the Railway Act by refusing to direct such a contribution.

If the Corporation of the City of Hamilton, which is the applicant in the present proceeding, has any rights or claims against the Crown in respect of the Desjardins canal, they are to be preserved so that it may remain open to the city to take any other action which it may desire in this respect.

December 28, 1935.

The Assistant Chief Commissioner and Commissioner Norris concurred.

ORDER No. 52635

In the matter of the Order of the Board No. 47196, dated August 11, 1931, authorizing the City of Hamilton to construct a new high level highway bridge over the Desjardins Canal at York Street, in "Ordnance Survey" on Burlington Heights, in the said City, and reserving the question of the distribution of the cost thereof;

And in the matter of the application of the City of Hamilton for an Order apportioning the said cost among the City of Hamilton, the Toronto, Hamilton & Buffalo Railway Company, the Canadian Pacific Railway Company, and the Desjardins Canal Company, or the Department of the Government representing the Crown and the said Canal Company.

File No. 20161.2

MONDAY, the 30th day of December, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Ottawa, December 10, 1935, in the presence of Counsel for and representatives of the City of Hamilton, the Toronto, Hamilton & Buffalo Railway Company, and the Canadian Pacific Railway Company, and what was alleged; and upon reading the further written submissions filed on behalf of the City,—

It is ordered: That the application be, and it is hereby, refused.

2. That if the applicant, the Corporation of the City of Hamilton, has any rights or claims against the Crown in respect of the Desjardins canal they are to be preserved so that it may remain open to the City to take any other action which it may desire in this respect.

H. GUTHRIE,
Chief Commissioner.

Application of the Transportation Commission of the Maritime Board of Trade for a reduction in rates on potatoes as per C.N. Tariff C.R.C. No. E-1671 and C.P.R. Tariff C.R.C. No. E-4485 by 3 cents per bushel or 5 cents per 100 pounds, carloads, to correspond with reductions in Ontario and Quebec, as per C.N.R. Tariff C.R.C. No. E-2115 and C.P.R. Tariff C.R.C. No. E-4742.

File No. 34822.40

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER:

This application was heard by the Board at sittings held at Moncton, N.B., on November 14 and 15, 1935, and at Ottawa on 3rd and 12th December, 1935, in the presence of counsel and representatives of the Transportation Com-

mission of the Maritime Board of Trade, the Montreal Board of Trade, the Toronto Board of Trade, the Hamilton Board of Trade, the Ontario Potato Growers' Association, the Canadian National Railways, and the Canadian Pacific Railway Company.

At the hearing at Moncton counsel for the province of Ontario opposed the application, but subsequently withdrew from the case.

The Maritime Freight Rates Act, 1927, was assented to on April 14, 1927, and under the provisions of this Act all existing freight tariffs in respect of preferred movements of freight traffic, as defined in sections 4 and 5 of the Act, were to be cancelled on July 1, 1927, and other tariffs substituted therefor showing a reduction in such tariffs of approximately 20 per cent. The Board of Railway Commissioners was authorized and directed by the Act to approve such cancellations and, subject to the provisions of the Railway Act of 1919 respecting tariffs of tolls for the carriage of freight where not inconsistent with the Maritime Freight Rates Act, to approve all tariffs of tolls so substituted, and to maintain such substituted tariffs on the general rate level of approximately 20 per cent below the tolls or rates existing on 1st day of July, 1927, with power to the Board to allow an increase or reduction of such tolls or tariffs from time to time to meet increases or reductions in the cost of operation.

The Board was further directed to adjust or vary such substituted tolls or rates from time to time as new industrial or traffic conditions might arise, but always in conformity with the intent of the Maritime Freight Rates Act as expressed in sections 7 and 8 and other relative sections of the said Act.

The title of the said Act is "An Act Respecting the Canadian National Railways and the Tariffs of Tolls to be Charged on Certain Eastern Lines." This Act as originally passed contained a preamble setting forth that it was expedient to adopt certain recommendations made in the report of the Royal Commission on Maritime Claims, dated September 23, 1926, and also reciting that it was expedient that effect should be given to such recommendations " in so far as it is reasonably possible so to do without disturbing unduly the general rate structure in Canada." The Maritime Freight Rates Act was carried into the Revised Statutes of Canada, being Cap. 79 thereof, and in the revision the said preamble was omitted and certain minor amendments were made in the text of the Revised Act.

While the preamble of the above Act was omitted in the revision by the commissioners appointed for the consolidation of the statutes, the preamble was not expressly repealed by the schedule which was attached to the Roll showing the Acts and parts of Acts which had been repealed, and I am of opinion that the preamble may still be looked at in determining the purport and object of the Maritime Freight Rates Act under the provisions of section 4 of the Interpretation Act. It is to be noted that upon the hearing of this application counsel for the applicants and also for the railways discussed the preamble, and I note that the preamble of the original Act was also discussed by the Chief Justice of Canada in a judgment delivered by him upon certain questions of law submitted for decision to the Supreme Court of Canada upon the Maritime Freight Rates Act, as reported in Canada Law Reports, 1933, p. 423. I take it that both the title and preamble of the Act may be considered in endeavouring to ascertain the purport and object of the Act.

The present application is in respect of competitive tariffs put into operation by the Canadian National Railways and the Canadian Pacific Railway Company, respectively, establishing reductions in freight rates upon shipments of potatoes within certain areas in Ontario and Quebec, but outside of the "select territory " as defined in the Maritime Freight Rates Act.

There is a verbal variation in the language employed throughout the Act to designate freight charges under section 3. The terms used are "freight tariffs," "tariffs," "tariffs of tolls," and "tolls or rates." The interpretation clause of the Railway Act, section 2 (32), applies to the Maritime Freight Rates Act and "toll" or "rate" is defined as "any toll, rate, charge or allowance" charged by a railway company in connection with the transportation of goods, etc.

Competitive tariffs which railway companies are authorized to issue under the provisions of sections 328, 329 and 332 of the Railway Act are not specifically mentioned in the Maritime Freight Rates Act. It is to be noted that the Board is not required to approve competitive tariffs under the provisions of the Railway Act, although power is given to the Board to declare what are competitive points not subject to the long and short haul clause, and to pass regulations as to the filing and publication of such tariffs.

According to the records in the office of the Board of Railway Commissioners, there have been filed with the Board over 300 competitive freight tariffs having effect at various points in Canada outside of the select territory as specified in the said Act.

The question has arisen under the present application as to whether the Maritime Freight Rates Act applies to such competitive tariffs which are in effect at various points throughout Canada outside of the "select territory," as described in the Maritime Freight Rates Act. It is contended on behalf of the applicants that shippers from points on the "eastern lines" in the Maritime Provinces are entitled to a proportionate rate reduction in respect of all competitive tariffs which have been filed by the railway companies pertaining to freight traffic outside of the Maritime Provinces. It is not contended by the applicants that there should be a flat discount of 20 per cent upon these competitive rates, but that Maritime shippers are entitled to a proportionate amount of the 20 per cent discount applicable to the mileage in the Maritime Provinces over which freight is hauled.

While the present application is for a reduction of 3 cents per bushel, or 5 cents per cwt., on potatoes as per C.N. Tariff C.R.C. No. E-1671 and C.P.R. Tariff C.R.C. No. E-4485 to correspond with reductions in Ontario and Quebec as per C.N. Tariff C.R.C. No. E-2115 and C.P.R. Tariff C.R.C. No. E-4742, it was very plainly intimated upon the hearing of this application that the question of the rate upon potatoes was only in the nature of a test case, and that the real claim of the applicants was that they were entitled to reductions upon all shipments from the Maritime Provinces to points in Canada where such competitive tariffs were in force and more specifically in respect of all produce of the Maritime Provinces.

The express purpose of the railways in establishing these competitive rates on potatoes was to meet motor-truck competition in Ontario and Quebec, which had enormously increased in recent years in the transportation of potatoes. This purpose was expressly stated upon the tariffs filed with the Board.

As the present application has now assumed the nature of a test case, I have thought it well to consider the various matters involved upon general principles as applicable to all competitive tariffs rather than as affecting freight rates upon a single commodity.

After a careful examination of the Maritime Freight Rates Act and of the relevant sections of the Railway Act, and after considering both the title and preamble of the Maritime Freight Rates Act as originally enacted, I am of opinion that the purport and object of the Maritime Freight Rates Act does apply to competitive tariffs established by railway companies between points outside of the "select territory" as defined in the Act; and that Maritime ship-

pers over the "eastern lines" of the Canadian National Railways, as defined in the Act, or over other railways as provided in Section 9 of the Act, are entitled to a proportionate reduction in competitive freight rates in order to maintain the ratio of advantage accorded to them under the terms of the Maritime Freight Rates Act; provided, however, that it can be established that any competitive tariff issued by a railway company "may destroy or prejudicially affect" the advantages given by the Act to Maritime shippers in favour of persons or industries located elsewhere than in the "select territory," as provided by Section 8 of the Act.

I refer again to the judgment of the Supreme Court of Canada *re* the Maritime Freight Rates Act, C.L.R., 1933, p. 423. While it is true that the question for decision in this case chiefly involved the interpretation of section 9 of the Act, the judgment of the learned Chief Justice of Canada deals generally with sections 7 and 8 of the Act. I quote from the judgment at p. 432 as follows:—

> "The Maritime Act, by the general declaration of policy in its preamble, left little room for doubt as to the governing purpose of it. There is, besides, a specific declaration in section 8 that the purpose of the Act is to give certain statutory advantages in rates in the "Select Territory," and that these "statutory rates" are not based upon a principle of fair return to the railways for the carriage of service."

Also from p. 438 *et seq* I quote the following:—

> "By section 8 the "purpose of this Act" is explicitly declared to be the purpose of "giving certain statutory advantages" in respect of charges for railway transport to the "persons and industries" in the select territory; and the Board is expressly prohibited from approving or allowing any tariffs which may "destroy or prejudicially affect" such advantages "in favour of persons or industries located elsewhere than in such select territory."
>
> "Shippers, in Nova Scotia, of apples, for example, destined for Montreal, are to enjoy the reduced rates which are to go into effect immediately on the passing of the statute (rates 20 per cent below the existing rates); and to the extent of this reduction the Board is required to maintain a "discrimination between" (Railway Act, s. 314) the select territory and other localities where apples are produced and shipped—the apple districts of Ontario, for example, and British Columbia."
>
> "There can, we conceive, be no question as to the scope of sections 7 and 8. They apply to all rates "specified in the tariffs of tolls in this Act provided for." They apply to the substituted tariffs which are to be "prepared and submitted to the Board" immediately upon the passing of the Act. They apply also, and this it is important to emphasize, to these tariffs, as varied and adjusted (under subs. 2 (*c*) of s. 3) "as new industrial or traffic conditions arise." By the explicit terms of s. 9 (2) they apply to the tariff tolls to be approved under that section. In performing the duty of the effecting or sanctioning of such variations and adjustments, the Board is required to act "always in conformity with the intent of the Act as expressed in sections 7 and 8." The "intent of the Act as expressed" in these sections, which is to govern the Board in effecting or sanctioning such variations and adjustments, is that persons and industries in the select territory, as to the "preferred movements" are to enjoy a statutory preference of 20 per cent in respect of railway rates over persons and industries "located" elsewhere. As already observed, we think the phrase "the rates specified in the tariffs of tolls in this Act provided for" must be read as including the variations and adjustments brought into force under section 3 (2c); and that the effect

of the words of this last-mentioned enactment "always in conformity with the intent of this Act as expressed in sections 7 and 8 and other relative sections hereof" ("other relative sections hereof" would appear to contemplate the principal enactment of section 3 requiring the reduction of existing rates by 20 per cent) is to provide for the maintenance in the tariffs, as adjusted and varied, of the difference of 20 per cent between the rate brought into force when "new industrial or traffic conditions arise" and the rate which would have prevailed if the Act had not been passed."

"This seems to be the necessary deduction from the declaration (in s. 7) that "fair return to the railway for services rendered" is not to be the principle determining the variations or adjustments under section 3 (2c) and the declaration in section 8 that the favoured persons and industries are always to enjoy the advantage of the discrimination established in their favour as against other localities."

In this connection reference may also be made to the case known as "the Malagash Salt Company Case" which was decided by the Board on November 6, 1929, and an order made under the authority of section 8 of the Maritime Freight Rates Act disallowing certain rates on salt which had been put into effect by the New York Central Railroad and the Pennsylvania Railroad from points in the state of New York to Ottawa and Cornwall. The cancellation in this case took place upon the ground that such rates destroyed certain statutory advantages which were accorded under the provisions of the Maritime Freight Rates Act to a certain industry in the Maritime Provinces.

Sections 7 and 8 of the Act are declaratory of the purpose and object of the Act, but the concluding words of section 8 constitute a mandatory direction that the Board shall not approve or allow "any tariffs" which may destroy or prejudicially affect such advantages in favour of persons or industries located elsewhere than in such select territory. Reading this section in the light of the judgment of the Supreme Court of Canada above recited, my opinion is that the language employed would include competitive tariffs effective in other parts of Canada outside of the select territory where the destructive or prejudicial effect of such tariffs can be established as required by section 8.

In coming to the conclusion that the Maritime Freight Rates Act does apply to the various competitive freight tariffs now in force throughout Canada outside of the select territory as defined in the Act, I have not overlooked the special clause in the preamble of the original Act that effect should be given to the recommendations contained in the report of the Royal Commission on Maritime Claims "in so far as it is reasonably possible so to do without disturbing unduly the general rate structure in Canada." I am satisfied that no serious disturbance would be caused to the general rate structure in Canada if the competitive rates on potatoes were disallowed by the Board. However, I am not prepared to say that there would be no undue disturbance in the general rate structure if the 300 odd competitive tariffs became involved in the matter. Counsel for both the railway companies pointed out most forcibly many anomalies which would follow a general application of the provisions of the Maritime Freight Rates Act to all competitive tariffs, and I am inclined to think that if such a course were followed throughout the whole list of competitive tariffs a very real disturbance of the freight rate structure would ensue. But as the application now before the Board is only in respect of a single commodity, I do not anticipate that any serious consequence to the general freight rate structure would ensue through any action which the Board may determine upon in this particular case.

By section 8 of the Act it is provided that the Board shall "not approve nor allow" any tariffs which may destroy or prejudicially affect such advantages in favour of persons or industries located elsewhere than in such select territory But it is to be noted that competitive tariffs do not require the approval of the Board under the provisions of the Railway Act. The provision that the Board shall "not allow" implies the right of the Board to disallow or cancel, and cancellation was ordered by the Board in the Malagash Salt Case above referred to.

In the present application the applicants ask for specific reductions in rates upon potatoes and counsel for the applicants argued that under section 3 subsection 2, paragraph (*c*), the Board had power to order the reductions asked for. I do not think the Board has power to do so. In my opinion section 2 of the Act refers exclusively to freight tariffs upon or over the "eastern lines" as specified in section 4. May I again summarize the provisions of section 3 as I understand them. Section 3 provides that all such tariffs (on eastern lines) be cancelled and other tariffs substituted therefor. This was carried into effect on July 1, 1927. The Board is then directed to approve "such" cancellations, to approve all tariffs "so" substituted, to maintain "such" substituted tariffs, and by paragraph (*c*) of subsection 2 of section 3, the Board is authorized and directed to

> "(*c*) adjust or vary *such* substituted tolls or rates from time to time as new industrial or traffic conditions arise, but always in conformity with the intent of this Act as expressed in sections seven and eight and other relative sections hereof."

I think it is clear from the language employed throughout section 3 that the substituted tolls or rates which the Board may adjust or vary under paragraph (*c*) are rates in effect from time to time upon the eastern lines, and that the section does not apply to competitive tariffs established in other parts of Canada outside of the select territory.

A most important question to be decided in this application under section 8 is a question of fact, and it will be a question of fact in respect of any competitive tariff to which exception may hereafter be taken by the applicants or by other parties. The question briefly stated is this: May the competitive tariffs on potatoes shipped by the railways destroy or prejudicially affect the advantages given to Maritime Province shippers under the Act in favour of persons or industries located elsewhere? The evidence submitted by the applicants to answer this question in the affirmative was by no means conclusive. Counsel for the applicants submitted among other things that it was merely necessary for the applicants to produce these competitive tariffs showing the reductions in rates in Ontario and Quebec to establish their contention. In my opinion, it is necessary to go further than this and prove some actual or probable destruction of Maritime trade, or some prejudicial effect thereupon, either heretofore sustained or likely to ensue as a result of these competitive tariffs.

The evidence submitted by the applicants and by other parties interested was both verbal and documentary and included a very large number of exhibits which furnish statistical information bearing upon potato production, shipments, and freight rates in the Maritime Provinces and in Ontario and Quebec.

The evidence and the exhibits have been carefully analysed for the purpose of determining what has been shown indicating or proving that the potato shippers of the Martime Provinces have been injured, prejudicially affected, or subjected to detriment, which can be attributed specifically to the Ontario truck competitive rates which were first published by the railways in September, 1931.

Mr. Scales, potato producer in Prince Edward Island, stated (p. 3072) that, according to figures supplied by the Department of Agriculture at Ottawa, the

carload movement from the Maritime Provinces to Toronto, Montreal, Quebec and Ottawa averaged about 1,100 cars per year for the years 1923, 1924. 1925 and 1926; that, during the years 1928, 1929 and 1930, it increased to 3,500 cars per year and, for 1931, 1932, 1933 and 1934, averaged about 4,000 cars per year. It was in September, 1931, that the truck competitive rates were established, yet, according to the figures given by Mr. Scales, the movement since that time has been the heaviest from the Maritime Provinces.

In applicants' letter of January 26, 1935 (Exhibit 7), they state:—

> "The carlot arrivals, table stock potatoes, at Montreal and Toronto, by months, for the years 1928 to 1932, inclusive, and for 1933-1934 to April 1, show variances from year to year, *attributable to various economic causes other than truck competition.*"

In the same letter they set out that the carload movement of Maritime potatoes to Ontario, during the past two crop years (August-July), was as follows:—

	Cars
1932-1933	891
1933-1934	3,278

The only figures given by the railways which enable separation, as between Ontario and Quebec destinations, for both companies. are for the crop year 1933-34 and show a movement of 3,440 cars from Maritime points to Ontario in that year, as compared with applicants' figure of 3,278 cars.

In applicants' Exhibit No. 8, they show carload arrivals of Prince Edward Island potatoes at Toronto as follows:—

Year	Number of Cars
1928	396
1929	212
1930	327
1931	225
1932	332
1933	495
1934	702

Taking the applicants' figures, although they are irreconcilable with the carriers' Exhibit No. 41, it will be noted that there was an increased movement in the years 1932, 1933 and 1934 as compared with 1931, although truck competitive rates in Ontario were established in 1931. The movement of 702 cars from Prince Edward Island to Toronto in 1934 is greatly in excess of any movement from Prince Edward Island to Toronto during the last twelve years, the next highest movement being 495 cars in 1933. Similarly, the same exhibit shows that the 1934 movement from New Brunswick was the highest during the past twelve years, except for the year 1930.

Applicants' Exhibit No. 17 shows the average price per hundredweight of potatoes in Prince Edward Island, New Brunswick, Quebec, and Ontario for the years 1927 to 1933. To give a more comprehensive picture, the figures have been taken out for the years 1925 to 1934, also including the province of Nova Scotia, as compiled by the Dominion Bureau of Statistics, Agricultural Branch, and are as follows:—

Province	Year 1925	1926	1927	1928	1929	1930	1931	1932	1933	1934
Prince Edward Island	$1.75	$1.30	$0.98	$0.45	$1.59	$0.65	$0.25	$0.52	$0.65	$0.26
Nova Scotia	1.78	1.49	1.00	.60	1.37	.80	.50	.65	.95	.50
New Brunswick	1.78	1.32	1.05	.35	1.35	.65	.25	.50	.50	.33
Quebec	3.25	1.40	1.31	1.04	1.28	.95	.51	.63	.71	.48
Ontario	1.66	1.87	1.39	.93	1.82	.80	.39	.73	1.00	.55
Prince Edward Island— over Ontario	.09	....	....	....	....	....	....	....	....	....
New Brunswick— over Ontario	.12	....	....	....	....	....	....	....	....	....
Prince Edward Island— under Ontario	....	.57	.41	.48	.23	.15	.14	.21	.35	.29
New Brunswick— under Ontario	....	.55	.34	.58	.47	.15	.14	.23	.50	.22

On applicants' Exhibit it was stated:—

> "As it is indicated in the above values, the growers in Prince Edward Island and New Brunswick receive considerably less for their potatoes than the farmers in Ontario and Quebec. *The cost of transportation to the markets of Ontario and Quebec is the principal cause for these differences.* It is, therefore, apparent that any changes resulting in a decrease in the wholesale prices in Ontario and Quebec such as a decrease in transportation charges in the Central Provinces prejudicially affects the shippers in the Maritime Provinces."

It clearly is not apparent wherein these figures furnish any justification for the statement that "the cost of transportation to the markets of Ontario and Quebec is the principal cause for these differences," or that they furnish any evidence or proof that the truck competitive rates have prejudicially affected the shippers in the Maritime Provinces. It will be noted that, in 1925, the average price was higher in Prince Edward Island and New Brunswick than in Ontario. In 1926, the New Brunswick price was 55 cents under Ontario and, in 1928, following the reduction in the rates from the Maritime Provinces pursuant to the Maritime Freight Rates Act, and with no reduction in the Ontario rates, the New Brunswick price was 58 cents under Ontario, as compared with 55 cents in 1926 under higher rates. Without any change in the freight rates during the years 1928, 1929 and 1930, either from the Maritime Provinces or in Ontario, the price difference in Prince Edward Island under Ontario dropped from 48 cents in 1928 to 23 cents in 1929 and to 15 cents in 1930; similarly, in New Brunswick, the price difference dropped from 58 cents in 1928 to 47 cents in 1929 and to 15 cents in 1930. How can the transportation cost, which was unchanged, be stated to be "the principal cause for these differences?" Then, it may be further pointed out that, with the same truck competitive rates in force in Ontario during the years 1933 and 1934, or, in other words, no difference in transportation cost during this period, it is noted that the price of New Brunswick potatoes, while 50 cents under Ontario in 1933, was only 22 cents under Ontario in 1934 and this latter figure shows a much lower price spread than existed in other years during which no truck competitive rates were in force in Ontario.

In Prince Edward Island, the average price in 1931 was 25 cents per 100 pounds; in 1932, it was 52 cents, an increase of 27 cents per 100 pounds; in 1933 it was 65 cents, an increase of 40 cents per 100 pounds over 1931; and, in 1934, it was 26 cents, a decrease from the 1933 price of 39 cents per 100 pounds. How can these price differences be attributed to *a rate reduction averaging 5 cents per 100 pounds* within a limited area in Ontario? In Ontario, in 1931, the average price was 39 cents per 100 pounds; in 1932, it was 73 cents, an increase of 34 cents per 100 pounds; in 1933, it was $1, an increase of 61 cents per 100 pounds over 1931. Were these price increases attributable to *a rate reduction averaging 5 cents per 100 pounds within a limited area?* With the rate reduction still in force, the Ontario price, in 1934, decreased 45 cents per 100 pounds from that of 1933.

Applicants' Exhibit No. 65 shows potato movements from New Brunswick and Prince Edward Island to Ontario and Quebec during the crop seasons 1928-9 to 1934-5 and directs attention to a decreased movement during the years 1931-2 to 1934-5, excepting the year 1933-4 when, it is stated that, due to scarcity of table stock in Ontario caused by frost and blight, there was a relatively increased movement in comparison with the other three crop years. It is assumed that this exhibit purports to show a decreased movement from Prince Edward Island and New Brunswick resulting from the establishment of the truck competitive rates. As the truck competitive rates in Quebec have been cancelled and it is only the truck competitive rate area within Ontario that is

now involved, it is a comparison to Ontario that is material and this is not shown in this exhibit. The only figures on record are those contained in carriers' Exhibit No. 40, which shows the cars of potatoes from Canadian National Railways Atlantic Region points (Riviere du Loup, Monk, Quebec, and East) to points in Ontario during the calendar years 1928 to 1934 and to the end of October for 1935. Recasting these latter figures into crop years and adding thereto the water movements, as shown in Exhibit No. 39, the movement from New Brunswick and Prince Edward Island, also Quebec points within the select territory east of Riviere du Loup and Monk, to Ontario, via the Canadian National Railways and water, was as follows:—

Crop Year	Number of Cars
1928-1929	1,476
1929-1930	1,880
1930-1931	1,696
1931-1932	342
1932-1933	1,012
1933-1934	1,943
1934-1935	1,071

Figures showing the movement via the Canadian Pacific Railway from New Brunswick to Ontario points during the same period are not of record, Exhibit No. 49 only showing segregation as between Ontario and Quebec for the last two crop years. The figures given are for movements to all points in Ontario, whereas the truck competitive area does not embrace the entire province, being confined as follows:—

CANADIAN NATIONAL RAILWAYS

Parry Sound, Scotia Junction and Pembroke on the north, Sarnia and Windsor on the west, Renfrew, Harrowsmith and Kingston on the east.

CANADIAN PACIFIC RAILWAY

Stations in Ontario: Renfrew Junction, Parry Sound and south thereof; Sharbot Lake, Tichborne, Kingston and west thereof.

Truck competitive rates in Ontario were established in September, 1931, for distances up to 100 miles; extended to 150 miles in March, 1933; and to 300 miles in May, 1933, yet the potato shipments from the Maritime Provinces to Ontario were greater during the crop years 1933-4 and 1934-5 than in the two preceding crop years, during which truck competitive rates were in force.

As indicative of lack of prejudice against the Maritime potato shippers by the truck competitive rates in Ontario, the small movement under these truck competitive rates, as compared with the movement from the Maritime Provinces, may be noted. There is set out below the movement from the Maritime Provinces, via the Canadian National Railways and water, during the crop years (August-July) as indicated, also the cars moved via Canadian National Railways under Ontario truck competitive rates during the calendar years shown:—

	Crop Years			
	1931-32 Cars	1932-33 Cars	1933-34 Cars	1934-35 Cars
Ex Maritimes	342	1,012	1,943	1,071
	Calendar Years			
	1932 Cars	1933 Cars	1934 Cars	1935 Cars
Ontario truck-competitive rates	146	59	121	*46

* To August 31st, 1935.

Exhibit No. 27 shows the potato production, estimated consumption (based on 300 pounds per capita, which is the figure used by the Dominion Bureau of Statistics) and surplus or deficit in the provinces of Ontario, Quebec, New

Brunswick and Prince Edward Island for the years 1928 to 1935. This exhibit appears to throw some light upon the variation in movement from year to year from Maritime Provinces to Ontario. In 1929, Ontario had a deficit (production versus consumption) of 75,612 tons and, in the crop year August, 1929, to July, 1930, the movement from Prince Edward Island and New Brunswick via the Canadian National Railways, as shown above, increased from 1,476 to 1,880 cars. In 1930, Ontario is shown as having a surplus of 40,968 tons and the Maritime movement for the following crop year dropped back to 1,696 cars. In 1931, the Ontario surplus is shown as 87,348 tons, and the Maritime movement for the following crop year fell off to 342 cars. In 1932, Ontario had a deficit of 46,423 tons and the Maritime movement increased from 342 to 1,012 cars. In 1933, Ontario again had a deficit, for the second year in succession, of 24,093 tons, and the Maritime movement for the following crop year was 1,943 cars. In 1934, Ontario had a surplus of 54,337 tons and the Maritime movement dropped back to 1,071 cars.

Appendix "A," attached, shows potato acreage and yield, years 1925 to 1935, inclusive, as prepared by the Dominion Bureau of Statistics, Agricultural Branch. Upon reference to the figures for the province of Ontario, it will be noted that the acreage in 1931, the year that truck competitive rates were first published, was 171,175 acres and the preliminary estimate for 1935 is 149,200 acres. These figures do not indicate any acreage expansion in Ontario which can be attributed to the influence of the truck competitive rates. The Ontario acreage in 1935 shows a decrease of 15,100 acres below 1934 and 21,975 acres below 1931, when the truck rates were established.

The evidence shows that the potatoes shipped from the Maritime Provinces command a price premium in Ontario of approximately 25 cents per bag over Ontario potatoes (applicants' Exhibit No. 13 shows even greater premiums in some months of 1934 and 1935); that the prices in Ontario are governed by the competition of the Ontario producers as well as competition between the producers in the Maritime Provinces shipping into that market.

Upon careful consideration of the whole record, it seems clear that the variations in movement from the Maritime Provinces to Ontario and the price fluctuations are attributable solely to crop conditions from year to year and various economic causes and nothing can be found therein that would indicate, much less prove, that the truck competitive rates published by the railways have had any influence with respect to these matters.

While reduced rail rates averaging approximately 5 cents per 100 pounds have been published to meet truck competition within a prescribed area in Ontario and for distances not in excess of 300 miles, it may be pointed out that, as a result of water competition from Prince Edward Island to Ontario, which had its origin in 1932, the railways, in 1933, also published, to meet the water competition, reduced rates from points in the Maritime Provinces to Belleville, Brockville, Hamilton, Kingston, Montreal, St. Catharines, Toronto, and Windsor. These competitive rates made reductions ranging from 3 to 11 cents per 100 pounds. The reduction to Toronto, the largest Ontario consuming market, was 8 cents per 100 pounds from stations in the Maritime Provinces west of Charlottetown and Summerside, Prince Edward Island, and 9 cents per 100 pounds from Prince Edward Island points beyond Summerside and Charlottetown, as compared with the 5 cent reduction made to meet truck competition in Ontario. These reduced rates were in force during 1935 from April 1 to November 30.

There is no question as to the effectiveness of the truck competition in Ontario. In Exhibit No. 28 the following figures are shown:—

Year	Ontario Potato Crop Tons	Railway Loadings Tons
1928	593.750	45.051
1929	424,200	43,570
1930	548,250	24,443
1931	602,100	24,070
1932	475,800	16,411
1933	505,600	8,967
1934	591,500	9,623

It is significant that, although truck competitive rates were published in September, 1931, the railway loadings of potatoes in Ontario have since materially decreased, namely, 1931, 24,070 tons; 1932, 16,411 tons; 1933, 8,967 tons; and 1934, 9,623 tons.

In Exhibit No. 33, it is shown that, during the period commencing the week ending February 23, 1935, to the week ending June 22, 1935, there were shipped:—

	Bags	Per Cent
By truck within the area covered by the competitive rates	265,538	88.9
By rail to points *outside* the truck territory at normal rates	14,579	4.9
By rail from and to points *within* the truck territory at competitive rates	18,394	6.2

Exhibit No. 34 shows 3,256 miles of road kept open for motor traffic during the winter of 1934 in the province of Ontario at a cost of $339,501.

In my opinion the applicants have failed to establish that the competitive tariffs on potatoes, which form the subject of this application, have resulted either in the destruction of, or to the prejudice of the advantages provided to shippers in the Maritime Provinces under the Maritime Freight Rates Act in favour of persons or industries located elsewhere than in the select territory. The evidence submitted by the various parties represented establishes to my satisfaction that in the matter of potato shipments in Ontario the whole difficulty has arisen through motor-truck competition with the railways. Shipments of potatoes in Ontario by rail to Ontario points have become almost negligible while motor-truck shipments continually increase. The competitive tariffs established by the railways have had no effect whatever in respect of potato shipments from the Maritime Provinces to Ontario points. Cancellation of these potato rates would not improve the position of Maritime shippers in any degree, and would only result in depriving the railways of the small portion of the transportation of potatoes in Ontario which they have been able to retain even under a substantial reduction of rates.

For the reasons above set out, I think this application should be dismissed.

OTTAWA, January 3, 1936.

The Assistant Chief Commissioner and Commissioners Stoneman and Stone concurred.

APPENDIX "A"

POTATOES

Province	Year	Acres	Total Yield Cwt.
Prince Edward Island..	1925	34,101	3,859,000
	1926	34,891	4,603,000
	1927	48,800	4,418,000
	1928	51,890	5,708,000
	1929	42,500	3,820,000
	1930	45,700	4,799,000
	1931	53,815	4,884,000
	1932	37,500	3,188,000
	1933	37,600	3,760,000
	1934	40,200	4,824,000
	1935*	33,100	3,045,000
Nova Scotia..	1925	27,869	2,570,000
	1926	29,452	3,115,000
	1927	31,628	2,680,000
	1928	30,685	3,280,000
	1929	30,783	2,872,000
	1930	31,200	3,338,000
	1931	22,664	1,946,000
	1932	20,600	2,122,000
	1933	20,500	1,866,000
	1934	21,900	2,453,000
	1935*	20,600	1,978,000
New Brunswick..	1925	40,000	4,232,000
	1926	42,744	6,090,000
	1927	46,998	4,204,000
	1928	52,239	6,776,000
	1929	45,215	4,646,000
	1930	48,000	5,853,000
	1931	60,260	6,341,000
	1932	48,200	3,856,000
	1933	46,900	5,394,000
	1934	54,200	6,938,000
	1935*	44,300	3,987,000
Quebec..	1925	156,000	10,982,000
	1926	159,000	14,676,000
	1927	162,000	14,175,000
	1928	164,000	13,071,000
	1929	162,411	15,429,000
	1930	165,800	13,491,000
	1931	146,190	16,897,000
	1932	132,500	11,475,000
	1933	133,100	13,444,000
	1934	143,400	14,244,000
	1935*	127,900	11,436,000
Ontario..	1925	163,790	9,428,900
	1926	153,468	9,898,000
	1927	159,871	9,297,000
	1928	181,241	11,875,000
	1929	148,435	8,484,000
	1930	159,000	10,965,000
	1931	171,175	12,042,000
	1932	156,000	9,516,000
	1933	157,500	10,112,000
	1934	164,300	11,830,000
	1935*	149,200	7,609,000

*Preliminary estimate as per Monthly Bulletin of Agricultural Statistics, October, 1935.
Authority—Dominion Bureau of Statistics, Agricultural Branch.

ORDER No. 52644

In the matter of the application of the Transportation Commission of the Maritime Board of Trade for a reduction in rates on potatoes as per Canadian National Railways Tariff C.R.C. No. E-1671 and Canadian Pacific Railway Tariff C.R.C. No. E-4485 by 3 cents per bushel or 5 cents per 100 pounds, carloads, to correspond with reductions in Ontario and Quebec, as per Canadian National Railways Tariff C.R.C. No. E-2115 and Canadian Pacific Railway Tariff C.R.C. No. E-4742.

File No. 34822.40

TUESDAY, the 7th day of January, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Moncton, November 14 and 15, 1935, and at Ottawa, December 3 and 12, 1935, in the presence of counsel for and representatives of the applicant, the Governments of the Provinces of Nova Scotia, New Brunswick, and Prince Edward Island, the Department of Agriculture for the Government of the Province of Ontario, the Ontario Potato Growers' Association, the Toronto, Hamilton, and Montreal Boards of Trade, and the Canadian National and Canadian Pacific Railway Companies, and what was alleged,—

Is is ordered:

That the application be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52575

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.2

THURSDAY, the 19th day of December, A.D., 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

It is Ordered: That the following tariffs, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement 10 to Tariff C.R.C. No. E-1231
Supplement 52 to Tariff C.R.C. No. E-1234
Supplement 109 to Tariff C.R.C. No. E-1235
Supplement 110 to Tariff C.R.C. No. E-1235
Supplement 58 to Tariff C.R.C. No. E-1244
Supplement 38 to Tariff C.R.C. No. E-1247
Supplement 11 to Tariff C.R.C. No. E-1261
Supplement 22 to Tariff C.R.C. No. E-1737
Supplement 17 to Tariff C.R.C. No. E-1745
Supplement 50 to Tariff C.R.C. No. E-1804
Supplement 51 to Tariff C.R.C. No. E-1804

Supplement 52 to Tariff C.R.C. No. E-1804
Supplement 53 to Tariff C.R.C. No. E-1804
Supplement 54 to Tariff C.R.C. No. E-1804
Supplement 30 to Tariff C.R.C. No. E-1829
Supplement 20 to Tariff C.R.C. No. E-1911
Supplement 21 to Tariff C.R.C. No. E-1911
Supplement 22 to Tariff C.R.C. No. E-1974
Supplement 20 to Tariff C.R.C. No. E-2070
Supplement 11 to Tariff C.R.C. No. E-2248
Supplement 2 to Tariff C.R.C. No. E-2311

H. GUTHRIE,
Chief Commissioner.

ORDER NO. 52597

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822·14.

SATURDAY, the 28th Day of December, A.D., 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board Orders:

1. That the tolls published in Tariff C.R.C. No. 736, filed by the Temiscouata Railway Company under Section 9, of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3, of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 736, approved herein, are as follows:—

Miles	Cents per 100 pounds
5	2½
20	4
40	4½
50	5
85	5½

H. GUTHRIE,
Chief Commissioner.

ORDER NO. 52598

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822·14.

SATURDAY, the 28th Day of December, A.D., 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board Orders:

1. That the tolls published in Tariff C.R.C. No. 737, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act,

be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 737, approved herein, are as follows:—

From—	Cents per 100 pounds
St. Modeste, Que.	5
Gagnon Siding, Que.	4
St. Rose, Que.	4

H. GUTHRIE,
Chief Commissioner.

ORDER NO. 52599

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822·13.

SATURDAY, the 28th Day of December, A.D., 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board Orders:

1. That the tolls published in Tariff C.R.C. No. 981, filed by the Dominion Atlantic Railway under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 981, approved herein, are as follows:—

To—	Cents per 100 pounds
Fort William, Ont.	36
Hamilton, Ont.	32
Montreal, Que.	26½
Port Arthur, Ont.	36
Quebec, Que.	27
Toronto, Ont.	32
Trois Rivières, Que.	27½
West Fort William, Ont.	36

H. GUTHRIE,
Chief Commissioner.

ORDER NO. 52600

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822·13.

SATURDAY, the 28th Day of December, A.D., 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board Orders:

1. That the toll published to Halifax, N.S., in item 101-D of Supplement No. 25 to Tariff C.R.C. No. 906, filed by the Dominion Atlantic Railway Company

under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 25 to Tariff C.R.C. No. 906, approved herein, is 13½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER NO. 52601

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822·12.

SATURDAY, the 28th Day of December, A.D., 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board Orders:

1. That the toll published to Woodbridge, Ont., in item 108, first revised page 51 of Tariff C.R.C. No. E-4757, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. E-4757, approved herein, is 47½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52602

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

SATURDAY, the 28th day of December, A.D. 1935.

HON. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board Orders:

1. That the tolls published in Group 4, first revised page 31 of Tariff C.R.C. No. E. 4757, filed by the Canadian Pacific Railway Company under Section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of Section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. E. 4757, are as follows:

From	To	Group 4 Cents per 100 pounds
Fairville, N.B. St. Andrews, N.B. Saint John, N.B. West Saint John, N.B.	Levis, Que.	49
	Montreal, Que.	50
	Quebec, Que.	47½
Halifax, N.S.	Levis, Que.	50
	Montreal, Que.	50
	Quebec, Que.	49
Yarmouth, N.S.	Levis, Que.	56½
	Montreal, Que.	56½
	Quebec, Que.	57½

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52603

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

SATURDAY, the 28th day of December, A.D. 1935.

HON. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board Orders:

1. That the toll published in item 205 of Supplement No. 30 to Tariff C.R.C. No. E. 4322, filed by the Canadian Pacific Railway Company under Section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 30 to Tariff C.R.C. No. E. 4322, approved herein, is 29 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52604

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 26th day of December, A.D., 1935.

HON. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board Orders:

1. That the tolls published to Clara Belle, Ontario, and in items 160B, 198, and 210A of Supplement No. 29 to Tariff C.R.C. No. E. 4322, filed by the Canadian Pacific Railway Company under Section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried

under the said Supplement No. 29 to Tariff C.R.C. No. E. 4322, approved herein, are as follows:—

	Cents per 100 pounds
Item 160B—	
Chipman, N.B. to Marysville, N.B. / Norton, N.B. / South Devon, N.B.	10½
Marysville, N.B. to Norton, N.B.	14
South Devon, N.B.	6
Norton, N.B. to South Devon, N.B.	14
Item 198—	
From Grand Falls, N.B.	24
Green River, N.B.	25½
Item 210A—	
Cabano, P.Q. to Noranda, P.Q. / Rouyn, P.Q.	35
Edmundston and St. Leonard, N.B. to Noranda, P.Q. / Rouyn, P.Q.	33

To Clara Belle, Ont., the normal rates will be those applicable to Copper Cliff, Ont.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52633

In the matter of the application of the Detroit and Windsor Subway Company and the Detroit & Canada Tunnel Company, hereinafter called the "Applicant Companies," for approval of Supplement No. 5 to Tariff C.R.C. No. 18, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5.

MONDAY, the 6th day of January, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant companies' said Supplement No. 5 to Tariff C.R.C. No. 18, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5, be, and it is hereby, approved.

H. GUTHRIE,
Chief Commissioner.

GENERAL ORDER No. 549

In the matter of the application of the Canadian Passenger Association for approval of proposed revision of regulations governing baggage car traffic in Canada, as prescribed by General Order No. 151, dated 8th November, 1915, as amended.

File No. 23328

MONDAY, the 23rd day of December, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered:

1. That the regulations governing baggage car traffic in Canada, attached hereto marked "A," be, and they are hereby, prescribed for the observance of every railway company within the legislative authority of the Parliament of Canada, therein referred to as "the carrier."

2. That the said regulations come into force on the 15th day of February, 1936.

3. That General Orders numbered 151, 179, 181, 191, 262, 444, 450, 491, and 533, dated respectively November 8, 1915; January 29, 1917; February 3, 1917; May 26, 1917; May 8, 1919; June 20, 1927; September 24, 1927; March 9, 1931; and March 22, 1935, made herein, be, and they are hereby, rescinded.

H. GUTHRIE,
Chief Commissioner.

"A"

REGULATIONS GOVERNING BAGGAGE CAR TRAFFIC IN CANADA

PERSONAL BAGGAGE

Rule 1. (*a*) Personal baggage consists of wearing apparel, toilet articles, and similar effects for actual use and necessary and appropriate for the wear, use, comfort and convenience of the passenger for the purposes of the journey and not intended for other persons or for sale. See also Rule 17.

(*b*) The carrier will not be responsible for loss of or damage to money, jewelry, negotiable papers and like valuables, liquids, perishable or fragile articles enclosed in baggage, nor for damage caused by same.

(*c*) Baggage must be enclosed in receptacles provided with handles, loops, or other suitable means for attaching checks, and sufficiently strong to with-

stand necessary handling, such as trunks, valises, telescopes, suit cases, leather hat boxes, satchels, medium sized boxes (constructed of wood or heavy card or fibre board), and soldier, sailor or immigrant bags.

(*d*) Receptacles when not securely locked will not be received or checked except on condition that no liability will be assumed for loss of articles therefrom, whether resulting from negligence of the carrier, its servants or agents or otherwise howsoever.

SAMPLE BAGGAGE

Rule 2. (*a*) Sample baggage consists of samples of merchandise and salesmen's catalogues carried by commercial travellers for the purpose of enabling them to make sales of goods similar to the samples carried or as shown in the catalogues, and not for sale or free distribution, by the owner or owners, their branch houses, customers or others. See also Rule 18.

(*b*) Money, jewelry, negotiable papers and like valuables, liquids, perishable or fragile articles should not be enclosed in sample baggage to be checked.

(*c*) Sample baggage must be enclosed in sample trunks or sample cases securely locked, sufficiently strong to withstand necessary handling (not in boxes, crates, or barrels).

EXCEPTION: Sample whips, fishing rods, club paraphernalia (such as golf clubs, hockey and lacrosse sticks, etc.) and other rigid articles may be enclosed in flexible cases, bundles or other containers not exceeding ninety inches in length, and are not subject to charge for excess size.

EXCESS VALUE

Rule 3. (*a*) The carrier will not accept for transportation from any one passenger baggage and/or other property that is declared to exceed $2,500 in value.

(*b*) The carrier shall not be liable in respect of or consequent upon loss of or damage or delay to any personal baggage whether caused by or resulting from negligence of the carrier, its servants or agents or otherwise howsoever for any amount in excess of $100 for any such baggage belonging to and checked for an adult passenger and $50 for any such baggage belonging to or checked for a child travelling on a half fare ticket, which amounts shall be deemed to be the respective values of such baggage, whether charged for as excess size or excess weight baggage or carried as free allowance, unless greater values are declared and extra charges paid at time of checking in accordance with the carrier's current tariff.

(*c*) Charges for declared excess valuation must be prepaid.

CHECKING

Rule 4 (*a*) The checking of baggage and articles carried in regular baggage service attaches only to a ticket when the baggage or other article offered for checking is the property of and is to be carried for the passenger to whom the ticket belongs.

(*b*) Checks may be issued to destination of ticket, or to an intermediate point via route of ticket (except that holders of round trip tickets permitting stop-overs may check baggage or property to a point intermediate to destination, or to a point beyond destination en route on return trip). Tickets used for the checking of baggage or property intermediate to destination will be honoured for the re-checking of baggage or property from an authorized stop-over point, but not from an unauthorized stop-over point. Baggage and other articles

will not be checked to destinations where delivery or intermediate carriage must be by highway bus lines, except where specifically authorized by carrier's current tariff.

(*c*) Baggage or property consisting of two or more pieces may be checked to not more than two destinations at the same time on the same ticket.

(*d*) Baggage or other articles to be checked must be presented with ticket to baggage agent at the station or wharf in sufficient time prior to the departure of train or steamer to permit of the proper recording, weighing or measuring, and the issue of the necessary checks for same.

(*e*) The carrier shall endeavour to forward such baggage or other articles on same train or steamer with passenger but will not be responsible for failure to do so.

Baby Carriages, Etc.

Rule 5. (*a*) Baby carriages, collapsible cribs or playpens, go-carts, baby sleighs, children's velocipedes and tricycles or similar articles, when used in connection with the journey of a child, and containing only essential articles such as pillows, robes and blankets securely fastened, will be checked and included in weight of passenger's baggage and carried at owner's risk. See also Rule 12.

(*b*) The carrier will not be responsible in any case for loss of or damage to such articles as pillows, robes and blankets carried in baby carriages, etc.

Bicycles

Rule 6. (*a*) Bicycles in trunks will be checked and included in weight of passenger's baggage, and carried at owner's risk.

(*b*) Bicycles not in trunks (lamps, cyclometers and tool bags to be removed) will be checked and included in weight of passenger's baggage, and carried at owner's risk.

(*c*) Where vehicle transfer is involved, bicycles not in trunks will be checked only to such transfer points.

Invalid Cots, Litters and Stretchers, and Invalid Chairs

Rule 7. (*a*) Invalid cots, litters and stretchers, and invalid chairs (including those propelled by electricity or by gasoline—gasoline removed from tank), for use of invalid travelling on same train, will be checked and included in weight of passenger's baggage and carried at owner's risk.

(*b*) Invalid cots, litters and stretchers, and invalid chairs (empty), when used by invalid in opposite direction, will be checked upon payment of charge in accordance with carrier's current tariff and carried at owner's risk.

Dogs and Dog Sleds, also Small Household Pets, such as Cats, Birds, Etc.

dogs and dog sleds

Rule 8. (*a*) Dogs not exceeding twenty-five dollars ($25) in value, and provided with securely fitting collar or harness, and chain or leash, if properly muzzled, all of sufficient strength, or in crates of sufficient strength, provided with handles, and if accompanied by owner or caretaker, will be checked and transported in baggage cars on payment of charge in accordance with carrier's current tariff. Dogs properly crated or boxed may be checked through irrespective of vehicle transfers en route, but dogs on chain or leash will not be checked beyond a transfer point where a vehicle transfer is involved.

(*b*) Dogs used in producing a theatrical performance or other entertainment, as specified in rule 13, will be considered as entertainment paraphernalia, provided they are carried in strong crates or other substantial containers fitted with handles, and will be handled under the provisions of Rule 13.

(*c*) Dogs intended for exhibition, bench shows, field trials, races, or coursing matches, or uncrated dogs will not be regarded as public entertainment paraphernalia, but will be handled in accordance with the provisions of this rule, except that dogs intended for exhibition or bench shows may be handled in special baggage cars in accordance with special baggage car rules.

(*d*) Dogs must be claimed immediately upon arrival at destination, otherwise they may be disposed of at the carrier's discretion. Carriers do not assume obligation to feed or water dogs en route or to store or care for them at stations.

(*e*) When checked from stations where an agent is on duty, all charges must be prepaid.

(*f*) Dogs do not form any part of the free baggage allowance, and the charge therefor is separate from and has no connection with the charge for excess baggage, except when forming part of entertainment paraphernalia as provided for in Rule 13.

(*g*) Any dog or crate of dogs of a declared value exceeding twenty-five dollars ($25), will not be transported in baggage service.

(*h*) The carrier will not be responsible for any sum greater than twenty-five dollars ($25) for loss of or injury to any one dog on chain or leash, or shipment of dogs in crate, whether caused by or resulting from negligence of the carrier, its servants or agents, or otherwise howsoever.

(*i*) Dog Sleds, will be checked upon payment of charge in accordance with carrier's current tariff. The carrier will not be responsible in any case for loss of or damage to any articles attached to or carried thereon. See also Rule 11.

SMALL HOUSEHOLD PETS, SUCH AS CATS, BIRDS, ETC.

(*j*) When accompanied by a passenger presenting valid transportation, small household pets (such as cats, birds, etc.) when in substantial crates or cages and of a declared value not exceeding twenty-five dollars ($25) per crate or cage containing one or more pets, will be transported in baggage cars on payment of charge in accordance with carrier's current tariff.

(*k*) Pets will not be checked beyond junction points where vehicle transfer is required.

(*l*) Pets must be claimed immediately upon arrival at destination. Carriers do not assume obligation to store or care for pets at stations. Passengers must attend to feeding and watering pets en route and at stations.

(*m*) When pets are checked from a station where an agent is on duty, all charges must be prepaid.

(*n*) Pets do not form any part of the free baggage allowance, and the charge therefor is separate from and has no connection with the charge for excess baggage.

(*o*) The carriers will not accept nor transport in regular baggage service small household pets, such as cats, birds, etc., where the declared value is more than twenty-five dollars ($25) per shipment.

(*p*) The carriers will not be responsible for any sum greater than twenty-five dollars ($25) for loss of or injury to any one pet or shipment of pets in crate or cage, whether caused by or resulting from negligence of the carrier, its servants or agents or otherwise howsoever.

Racing Shells and Racing Canoes for Regattas

Rule 9. Racing shells or racing canoes for regattas when accompanied by persons in charge will be handled only in extra baggage cars on trains acceptable to the carriers and charged for in accordance with current tariff. See also Rule 11.

Canoes

Rule 10. Canoes not exceeding eighteen (18) feet in length will be checked upon payment of charge in accordance with carrier's current tariff. Canoes do not form any part of the free baggage allowance and the charge therefor is separate from and has no connection with the charge for excess baggage. Not more than one canoe will be checked on one ticket. See also Rule 11.

Limited Liability

Rule 11. The carrier shall not be liable in respect of or consequent upon loss of or damage or delay to any receptacle, package or bundle containing any of the articles specified in Rules 8 (*i*) 9 and 10 of these regulations and the contents thereof or any of such articles not contained in a receptacle, package or bundle for any amount in excess of $5, whether such loss, damage or delay is caused by or results from the negligence of the carrier, its servants or agents or otherwise howsoever, which sum shall be deemed to be the value of any such receptacle, package or bundle or such article not so contained, unless a greater value is declared and extra charge paid at time of checking in accordance with the carrier's current tariff.

Miscellaneous Articles

Rule 12. The following miscellaneous articles other than baggage will be checked and included in the weight of passenger's baggage and carried at owner's risk, namely: adding machines in trunks or boxes, automobile tow bars (need not be enclosed), baby carriages, collapsible cribs or playpens, go-carts, baby sleighs, children's velocipedes and tricycles or similar articles (see Rule 5), beach chairs (collapsible and roped), bed rolls, wrapped in canvas or other strong material and securely roped, bicycles (see Rule 6 (*a*), bundles containing personal baggage properly wrapped in canvas or other strong material (paper, wrapping excepted) and securely roped, calculating machines in trunks or boxes, campers' and sportsmen's outfits, consisting of tent poles not exceeding fifteen (15) feet in length, tents, small bundles of bedding, and folding cots when securely wrapped, roped or strapped, also cooking utensils and provisions when in boxes or crates, chests (cedar, walnut, ornamental, etc.) when containing personal baggage only, as described in Rule 1, and crated or boxed, club paraphernalia, such as baseball, cricket, football, golf, hockey, lacrosse, lodge, polo, soccer, etc. when in closed receptacles, cots for use of invalid travelling on same train (see Rule 7), curling stones, dental equipment in closed receptacles, empty trunks or other baggage containers, fishing rods properly encased, guns (unloaded) in wooden or leather cases, invalid chairs and litters for use of invalid travelling on same train (see Rule 7), kits (special ophthalmic travelling) Department of Soldier's Civil Re-Establishment (between stations in Canada only) when accompanied by passenger (maximum weight of kit 250 pounds), miners' and prospectors' packs, mine rescue paraphernalia in closed receptacles, musical instruments in closed receptacles, outboard motors when in trunks or other rigid containers and gasoline removed from tanks, saddles in bags, travellers' rugs when properly secured, skis, snow shoes, steamer chairs, collapsible and roped, stretchers for use of invalid travelling on same train (see Rule 7), surf

boards, surveyors' tools and tripods, wrapped, except transits, levels, compasses and other similar instruments liable to injury, test weights when properly packed for safe handling (except that weights weighing twenty-five pounds or more, each provided with handle, need not be enclosed), tools (carpenters', mechanics', etc.) when in tool chests or otherwise properly enclosed, toboggans, with necessary attachments only, such as ropes and cushions, typewriters in trunks or boxes.

Entertainment Paraphernalia

Rule 13. (*a*) Property and scenery, domestic and trained animals, except dogs on chain or leash, calcium light cylinders (consisting of one cylinder containing hydrogen gas and one cylinder containing oxygen gas), stereopticon outfits, moving picture machines (but not including moving picture films), musical instruments, tents and tent poles (not exceeding fifteen feet in length), balloons, securely wrapped and roped, and other paraphernalia of size and character convenient for safe handling in baggage cars, used in producing a theatrical performance, concert, lecture or other public and/or private entertainment indoors or out-of-doors, which may be loaded in ordinary baggage cars, will be transported in regular baggage service subject to the weight allowance shown in paragraph (*a*), Rule 17, and excess weight charged for at regular excess baggage rates, or in special baggage car (subject to special baggage car rules), at the convenience of the carrier, except that no article or animal weighing over 250 pounds will be accepted for transportation in regular baggage service.

Note: Trunks containing wearing apparel for use either on or off the stage are subject to the provisions of Rule 20.

(*b*) Advertising frames, window cards, and similar advertising matter when enclosed in trunks, boxed or crated, carried by advance agents, will be checked and transported in baggage cars and included in the weight of passenger's baggage.

(*c*) Tent poles (exceeding fifteen (15) feet in length), seats, merry-go-rounds, ferris wheels and similar wheels, or vehicles of any description unless knocked down, will not be handled in regular baggage service.

(*d*) Aeroplanes, airships, automobiles, motor-cycles, and other conveyances or machines propelled or operated by engines or motors, attached or detached, will not be accepted for transportation in regular or special baggage car service, and applicants will be referred to the Freight Department or Express Company, except that when such form part of the equipment of circuses, carnival companies, street fairs, or similar organizations, or such conveyances or machines are used in performances of theatrical companies, they may be transported in special baggage cars subject to special baggage car rules.

Such articles will not be accepted for shipment unless the gasoline is drained from the tanks of these machines.

Racing motor boats and racing automobiles will not be accepted for transportation in regular or special baggage car service.

(*e*) Explosives (including fireworks) and other dangerous articles such as gasoline, matches, moving picture films, etc., will not be transported in regular or special baggage car service. See Rule 16 (c).

(*f*) Domestic and trained animals weighing not more than two hundred and fifty (250) pounds each, used in producing a theatrical performance or

other entertainment, will be checked and transported in baggage cars in regular baggage car service, or in special baggage cars, subject to special baggage car rules, at the convenience of the carrier, under the following conditions:—

(1) They must be accompanied by owners or caretakers who have purchased proper tickets, and who will provide proper facilities for feeding, watering, loading and unloading wherever necessary.

(2) They must be properly presented for shipment, which shall be made at convenience of the carrier.

(3) If animals are crated, charge shall be based on the actual weight with baggage allowance as shown in Rule 17.

(4) If not crated, the animals, except dogs on chain or leash, must either be weighed or a careful estimate made of the weight, and charges made accordingly, minimum charge for uncrated animals to be two dollars ($2). Dogs on chain or leash will be handled in accordance with Rule 8. Animals on leash will not be checked beyond a transfer point where a vehicle transfer is involved.

(5) Animals which may be dangerous, inconvenient, or undesirable to transport in baggage cars in regular service, such as elephants, lions, etc., and those weighing more than two hundred and fifty (250) pounds, will be handled only in special baggage cars, subject to special baggage car rules, or handled under special circus contracts.

(6) The animals which may be accepted for transportation in baggage service are only those which are used exclusively and regularly in giving theatrical performances, or other entertainments indoors or out-of-doors, *not including* race-horces, polo ponies, or animals owned by individuals for their private business or pleasure or for exhibition. Shippers of animals not acceptable for transportation in baggage service, or not otherwise provided for, should be referred to the Express or Freight Department.

(*g*) In the case of baggage and other property carried in regular baggage car service under this rule, the carrier shall not be liable for any claim in respect of or consequent upon the loss of or damage to such baggage or property except in the case of negligence of the carrier, its servants or agents, and in the case of such negligence, such liability shall not exceed the sum of twenty-five dollars ($25) for any one animal or crate of animals, or container of musical instruments (which amount shall be deemed to be the value of any one animal, or crate of animals, or container of musical instruments) nor the sum of one hundred dollars ($100) for all the baggage and property of any one adult passenger or fifty dollars ($50) for all the baggage and property of any one child travelling on a half-fare ticket (which amounts shall respectively be deemed to be the value of all the baggage and property of any one adult passenger and child travelling on a half-fare ticket), whether charged for as excess size or excess weight baggage, or carried as free allowance, unless a greater value is declared and charges paid at the time of checking in accordance with the carrier's current tariff.

(*h*) Special baggage cars may be obtained in accordance with the carrier's tariffs, for the conveyance of articles covered by this rule, and in that case the provisions as to charges for excess weight and as to maximum weight and size of articles carried in regular baggage service shall not apply.

(*i*) In the case of baggage and other property carried in special baggage cars under this rule, the carrier shall not be liable for any claim in respect of or consequent upon the loss of or damage to such baggage or property, except in the case of negligence of the carrier, its servants or agents, and in the case of such negligence, such liability shall not exceed the sum of twenty-five dollars ($25) for any one animal, or crate of animals, or container of musical instruments

(which amount shall be deemed to be the value of any one animal, or crate of animals, or container of musical instruments), nor the sum of one hundred dollars ($100) for all the baggage and property of any one adult passenger or fifty dollars ($50) for all the baggage and property of any one child travelling on a half-fare ticket (which amounts shall respectively be deemed to be the value of all the baggage and property of any one adult passenger and child travelling on a half-fare ticket), transported in such car or cars; and when cars are unaccompanied by passengers the total liability on contents of each car shall not exceed one hundred dollars ($100), which sum shall be deemed to be the value of such baggage and property, whether charged for as excess size or excess weight baggage or carried as free allowance, unless a greater value is declared and charges paid at time of checking in accordance with the carrier's current tariff.

(*j*) If a theatrical company or any member thereof, or other person engaging a special baggage car desires to declare a greater value than shown above on the whole or any part of their effects, the shipping agent will collect amount due for such declared extra value in accordance with the carrier's current tariff.

(*k*) The owner or his agent will so load such baggage and other property in a special baggage car as to prevent damage to or loss of such baggage or property in the ordinary course of transportation and will properly secure all doors and entrances to such car. The owner or his agent will also unload such baggage and property at destination with reasonable promptness and remove the same from the premises of the carrier immediately thereafter, otherwise the carrier may treat such baggage and property as unclaimed baggage subject to storage charges, and animals may, at the option of the carrier, be sold and out of the money rising from such sale the carrier may retain all reasonable charges and expenses of such detention and sale, paying over the surplus, if any, of such money to the person or persons entitled thereto.

(*l*) The carrier assumes no liability for loss or damage resulting from delay to baggage or property handled under this rule.

Special Baggage Cars for Excursions

Rule 14. (*a*) When a special baggage car is furnished on excursion trains run for picnics and similar purposes, members of the party may be permitted to load in such car (without checking) baskets of provisions, baby carriages and other paraphernalia incidental to the occasion, and all such articles shall be considered to be in the exclusive care and custody of the owners, and carried free, but only upon condition that the carrier shall not be responsible for any claims resulting from loss of or damage or delay to any such article, whether caused by or resulting from negligence of the carrier, its servants or agents, or otherwise howsoever.

(*b*) When special baggage cars are furnished for military excursions members of the party may be permitted to load into such cars without checking camp equippage and other paraphernalia incidental to the occasion and all such articles shall be considered to be in the exclusive care and custody of the owners, and carried free, but only upon condition that the carrier shall not be responsible for any claims resulting from loss of or damage or delay to any such articles whether caused by or resulting from negligence of the carrier, its servants or agents, or otherwise howsoever.

When a special baggage car or palace horse car is furnished for a military excursion, not more than twelve horses will be carried for any one excursion and then only at rates in accordance with the carrier's current tariff.

When horses are carried in connection with military excursions, carrier shall not be liable for any claim in respect of loss of or injury to any such horses

except in the case of negligence of the carrier, its servants or agents, resulting in a collision of the train on which such horses are carried or in the throwing of the car containing such horses from the track during transportation, and in the case of such negligence such liability shall not exceed the sum of twenty-five dollars ($25) for the loss of or injury to any one horse; which amount shall be deemed to be the value of such horse unless a greater value is declared and charges paid at time of shipment in accordance with the carrier's current tariff.

Corpses

Rule 15. (*a*) A corpse will be transported in baggage service at rates in accordance with carrier's current tariff, providing the corpse be accompanied on the same train by an adult holding proper transportation.

(*b*) A corpse will be accepted for transportation only on presentation of legal form of transit permit, properly filled out and signed, showing that the body has been prepared for shipment in accordance with the law.

(*c*) A corpse will not be checked to a destination where delivery or intermediate carriage must be by highway bus lines, nor beyond a station at which a vehicle transfer is required, except where special authority is given. The escort of the corpse will be required to make all arrangements for such transfer.

(*d*) Carriers will not assume responsibility for any damage to glass or other fragile fittings of burial caskets, nor for any damage growing out of or incident to the cracking or breaking of such glass or fittings. When a corpse is checked to a non-agency station the carriers assume no responsibility for the care of the corpse at such destination.

(*e*) Each corpse box must have not less than six handles and be plainly marked, showing name of deceased, destination, route and to whom consigned.

(*f*) Escort will be required to present a separate ticket for his or her own transportation, endorsed as per carrier's current tariff.

(*g*) Baggage of deceased may be checked upon presentation of the corpse ticket in accordance with the regulations governing the transportation of baggage of a passenger.

(*h*) A corpse will not be accepted or transported if it be offensive or if fluids are escaping from the case, notwithstanding the presentation of permits or certificates.

(*i*) When a casket and dead body presented for shipment in baggage service weighs more than five hundred (500) pounds, the excess weight will be charged for at current excess baggage rates.

(*j*) Two or more bodies may be transported with one person in charge.

(*k*) A reasonable quantity of flowers properly tagged or marked may accompany the corpse, for which no charge will be made and for which no liability will be assumed.

Explosives and inflammable Articles

Rule 16. (*a*) Explosives (including fireworks) and other dangerous articles, such as gasoline, matches, etc., must not be transported in baggage service.

(*b*) Passengers are cautioned against carrying dangerous articles such as matches, fireworks, gunpowder, cartridges, etc., in baggage. Section 349, subsection (1) of the Canadian Railway Act reads as follows: "No passenger shall carry, nor, except in conformity with any order or regulation made by the Board in that behalf, shall the company be required to carry upon its railway, gunpowder, dynamite, nitroglycerine, or any other goods which are of a dangerous or explosive nature."

(*c*) Moving picture films will not be carried in baggage service, except that railway companies are permitted to carry their own non-inflammable moving picture films in regular or special baggage car service.

Personal Baggage Allowance

Rule 17. (*a*) Subject to limitations as shown in Rules 19 and 20 (and except as otherwise provided in this rule or in tariff under which ticket is sold), one hundred and fifty (150) pounds of baggage, not exceeding one hundred dollars ($100) in value, will be checked without charge for each adult passenger, and seventy-five (75) pounds, not exceeding fifty dollars ($50) in value, for each child travelling on a half fare ticket.

(*b*) On " Round-the-World " tickets, subject to limitations shown in Rule 19, there will be checked without charge three hundred and fifty (350) pounds of baggage, not exceeding one hundred dollars ($100) in value, for each adult passenger, and one hundred and seventy-five (175) pounds, not exceeding fifty dollars ($50) in value, for each child travelling on a half fare ticket.

To secure above allowance, where passengers are en route to trans-Atlantic or trans-Pacific points, they must present at time of checking, a through railroad ticket reading up to the Atlantic or Pacific coast port (as the case may be) and an order or ticket covering steamship transportation beyond, provided both the railroad ticket and the steamship order or ticket are stamped " Round-the-World." Where passengers, however, are returning to original starting point in the United States or Canada, only the presentation of a railroad ticket from port of entry to destination (stamped " Round-the-World ") will be required.

(*c*) On Trans-Pacific tickets (i.e., tickets reading to or from Trans-Pacific points and stamped " Trans-Pacific ") subject to limitations shown in Rule 19 there will be checked without charge three hundred and fifty (350) pounds of baggage, not exceeding one hundred dollars ($100) in value, for each adult passenger, and one hundred and seventy-five (175) pounds, not exceeding fifty dollars ($50) in value, for each child travelling on a half fare ticket.

To secure the above allowance, where passengers holding such tickets are en route to Trans-Pacific points, they must present, at time of checking, a through railroad ticket reading up to the Pacific Coast port and an order or ticket covering steamship transportation beyond, provided both the railroad ticket and the steamship order or ticket are stamped " Trans-Pacific," " Coin Trans-Pacific " or " Domestic Trans-Pacific." Where passengers, however, are en route from trans-Pacific points, only the presentation of railroad ticket from Pacific Coast port to destination or to Atlantic port (stamped " Trans-Pacific ") will be required.

(*d*) On colonist and coach tourist (but not first class) tickets issued in Europe, or at Canadian Atlantic port of landing in exchange for orders issued in Europe to all destinations in Canada, two hundred and fifty (250) pounds of baggage, not exceeding one hundred dollars ($100) in value, will be checked without charge for each adult passenger and one hundred and twenty-five (125) pounds, not exceeding fifty dollars ($50) in value, for each child travelling on a half fare ticket. The same free allowance will apply on tickets issued at Winnipeg at balance of colonist or coach tourist fares.

(*e*) Articles specified in Rule 12 shall be included in the weight of passenger's baggage.

Commercial Travellers' Baggage Allowance and Liability

Rule 18. (*a*) Subject to limitations as shown in Rules 19 and 20 and except as otherwise provided in carrier's current tariffs, three hundred (300) pounds of sample and personal baggage will be checked free between points in Canada

only, and then only on presentation of current year's Canadian Commercial Traveller's transportation privilege certificate (on which baggage privileges must be endorsed), together with Commercial Traveller's passage ticket, which must bear corresponding number. Unless otherwise specifically provided by tariff, no special allowance beyond one hundred and fifty (150) pounds per ticket will be made Commercial Travellers presenting excursion, summer tourist, convention, or second-class tickets issued to the public, even though Commercial Traveller's certificate is presented with such ticket. Unless otherwise specifically provided by tariff, a free allowance of not more than one hundred and fifty (150) pounds of sample and personal baggage will be granted any Commercial Traveller who is not a member of a recognized Canadian Commercial Travellers' Association. Baggage may be checked to destination of ticket, or to an intermediate point, provided such point is on direct route of ticket, and must be weighed each time checked. Only one ticket will be honored in checking any one lot of sample baggage, except that when a Commercial Traveller is accompanied by an assistant who is solely in his employ, or that of the firm he represents, the authorized free allowance may be granted on each ticket.

(*b*) In consideration of special concessions granted to Commercial Travellers, the carriers will not be liable for any claims in respect of or consequent upon any loss of or damage or delay to any sample or personal baggage transported for a Commercial Traveller as such, whether the same is charged for as excess baggage or carried as free allowance.

Limit of Weight

Rule 19. No single piece of baggage or other article of any class weighing more than two hundred and fifty (250) pounds (except immigrant and/or colonist baggage, checked at port of landing) will be accepted for transportation in regular baggage service.

Excess Size

Rule 20. (*a*) For any piece of baggage or other article transported in regular baggage service any dimensions of which exceeds forty-five (45) inches, there will be a charge for each inch in excess of forty-five (45) inches for each such dimension equal to the charge for five (5) pounds of excess weight, measurements to include gable or dome shaped ends or similar protuberances.

(*b*) Any piece of baggage or other article, the greatest dimension of which exceeds seventy-two (72) inches will not be transported in regular baggage service.

(*c*) *Exceptions.*—This rule will not apply to the following:—

(1) Automobile tow bars.
(2) Baby carriages.
(3) Beach chairs.
(4) Bicycles not in trunks.
(5) Campers' and sportsmen's outfits.
(6) Canoes.
(7) Club paraphernalia (such as baseball. cricket, football, golf, hockey, lacrosse, lodge, polo and soccer).
(8) Corpses.
(9) Cots (invalid).
(10) Dogs or household pets in crates.
(11) Dog sleds.
(12) Entertainment paraphernalia, except trunks containing wearing apparel for use on or off the stage.

(13) Fishing rods, properly encased.
(14) Guns.
(15) Immigrant baggage checked at port of landing.
(16) Invalid chairs.
(17) Litters.
(18) Mine rescue paraphernalia.
(19) Samples, as defined in exception to Rule 2 (*c*).
(20) Skis.
(21) Sleighs.
(22) Snowshoes.
(23) Steamer chairs.
(24) Stretchers.
(25) Surf boards.
(26) Surveyors' tools and tripods.
(27) Tent poles.
(28) Toboggans.
(29) Trans-Pacific and Round-the-World baggage.

Excess Weight

Rule 21. (*a*) Baggage or any other articles specified in Rule 12 weighing more than the free allowance will be charged for in accordance with the carrier's current tariff.

(*b*) Charges for excess weight should be prepaid.

Method of Computing Charge for Excess Weight, Excess Size and Minimum Charge

Rule 22. Should a single lot of baggage be of excess weight or excess size, or both, the total charge will be computed by adding 5 pounds per inch of excess size to the number of pounds of excess weight and multiply the total number of pounds so computed by the excess baggage rate per hundred.

The following illustrates the method of computation:—

(1) If a trunk is 47 inches long, (and there is no excess weight) the extra charge would be computed on the basis of 2 inches (10 pounds).

(2) If a trunk is 47 inches wide and 49 inches long (and there is no excess weight) the extra charge would be computed on basis of 6 inches (30 pounds), since two of the dimensions exceed 45 inches.

(3) If a trunk is 47 inches high, 48 inches wide and 49 inches long (and there is no excess weight), the extra charge would be computed on the basis of 9 inches (45 pounds), as in that case three of the dimensions exceed 45 inches.

(4) If a trunk is 47 inches high, 48 inches wide and 49 inches long and there is 100 pounds excess weight, the extra charge would be computed on the basis of 9 inches (45 pounds for excess dimension) and 100 pounds for excess weight, total 145 pounds.

The minimum collection for any shipment of excess baggage, either of excess weight or excess size, or both, will be 25 cents.

No charge will be made for a fraction of an inch.

Charge for excess size must be made regardless of the number of tickets presented.

Storage

Rule 23. (*a*) Storage will be charged in accordance with carrier's current tariff on each piece of baggage or other article carried in regular baggage service, either inbound or outbound, checked, or not checked, remaining at stations or wharves over twenty-four hours.

Exceptions:

(1) Baggage and other articles will be held free when received at any hour Saturday and claimed before same hour Monday following, or when received at any hour Sunday and claimed before midnight Monday following. If not claimed within the time specified, storage will commence 24 hours after receipt of the baggage or other article. Dominion Holidays will be treated same as Sundays. When a Dominion Holiday falls on Saturday or Monday, or is observed on either of those days, the Sunday and the Dominion Holiday combined will be treated the same as Sunday. No deduction will be made for Sundays or Dominion Holidays after storage has begun.

(2) Sample baggage of Commercial Travellers holding current year's Commercial Travellers' transportation privilege certificates, arriving at stations in Canada after 1.00 p.m. Fridays, and also after 1.00 p.m. the Thursday preceding Good Friday, will be stored free of charge until midnight the Monday following. If not claimed within the time specified, storage will commence 24 hours after receipt of the baggage, except that if Monday is a Dominion Holiday sample baggage will be held free of storage until midnight of Tuesday following.

(3) Storage charges will be waived on baggage belonging to Trans-Pacific and Round-the-World passengers while en route through Canada.

(4) Immigrant baggage will be stored free of charge for any portion of a period of, but not exceeding, five days after arrival at Montreal, Toronto or Winnipeg.

Note: This concession is granted only when baggage has been checked through from port of landing to either Montreal, Toronto or Winnipeg, and is not granted when baggage is checked from port of landing to an intermediate point and there re-checked to Montreal, Toronto or Winnipeg.

(*b*) On any baggage or other article delivered at stations or wharves under claim or identification checks which is reclaimed and not checked out, or for which valid transportation is not produced showing that the owner is a passenger, storage will be charged at rate as per carrier's current tariff, without any free time allowance.

(*c*) Baggage or other articles in bond will be subject to storage charges when checked to and bonded on a station at which a Customs Officer is regularly on duty at train time. Such baggage and other articles in bond under other circumstances will not be subject to storage charges.

(*d*) After the expiration of 24 hours from the receipt of such baggage or articles in storage, the carrier shall be liable as a warehouseman only.

Lost Duplicate Checks

Rule 24. If a passenger loses a duplicate baggage or parcel room check and can identify himself or herself to the satisfaction of the carrier as the owner of such baggage or article, it will be delivered on payment of charge in accordance with carrier's current tariff for lost duplicate check and on signing a lost duplicate check receipt. On return of lost check to carrier making collection, amount collected will be refunded.

Identification Claim Checks

Rule 25. All baggage or other articles delivered at stations or wharves and not immediately checked to destination should bear a claim check or the baggagemen must be requested to issue an identification claim check when the baggage or other articles are received, otherwise no responsibility will be assumed by the carriers for such baggage or other articles left on their premises.

General Rules

Rule 26. (*a*) Any articles not specified in the foregoing rules shall not be carried in regular baggage service. When passengers fail to disclose nature of articles offered for checking, and it develops en route or at destination that the transportation of such articles as baggage is not authorized herein, collection shall be made in accordance with carrier's current tariff. Such property shall be entirely at the risk of the owner, and the carrier shall not be liable for loss of or damage or injury to the same, whether caused by or resulting from negligence of the carrier, its servants or agents, or otherwise howsoever.

(*b*) When baggage or other articles are transported unaccompanied by passenger, collection shall be made in accordance with carrier's current tariffs.

(*c*) Passengers should make memorandum of their baggage check numbers.

(*d*) In the case of baggage or other articles checked upon a through ticket at any point in Canada for conveyance to another point in Canada over any railway or railways subject to the legislative jurisdiction of the Parliament of Canada, the carrier checking such baggage or other articles, in addition to its other liability under these regulations, shall be liable to the extent provided for by these regulations for any loss, damage or injury to such baggage or other articles caused by or resulting from the act, neglect or default of the connecting or other carrier to which such baggage or other articles may be delivered in Canada, and from which the connecting or other carrier is not by these regulations or otherwise by law relieved; and the carrier so checking the baggage or other articles shall be entitled to recover from the connecting or other carrier on whose line the loss, damage or injury shall have been sustained, the amount of such loss, damage or injury as it (the checking carrier) may be required to pay under this regulation, as may be evidenced by any receipt, judgment or transcript thereof; and except as provided by this regulation the liability of the carriers for loss of or damage or delay to baggage or other articles checked to points beyond their lines shall cease as soon as such baggage or article is delivered to the next connecting carrier.

(*e*) In case of non-delivery of baggage or other articles checked, notice must be given in writing to the originating or terminating carrier within twenty (20) days after arrival of passenger at destination. In case of damage or delay to baggage or other articles checked, or loss of any of the contents from a receptacle, such notice must be given within twenty (20) days after delivery of such baggage, article or receptacle. Otherwise the carrier shall not be liable.

(*f*) Baggage and other articles carried under these regulations from Canadian to United States points and vice versa, must be examined by Customs Officer, or they will be held at the Border. Passengers should attend to this personally.

(*g*) When any baggage or article is checked to a flag station it must be claimed by presenting duplicate check to train conductor or baggageman; otherwise baggage will be forwarded to first station beyond where an agent is on duty and must be claimed at that station.

(*h*) All baggage and articles left unclaimed in baggage rooms for twelve months, may be sold by public auction.

SUMMARIES OF ORDERS ISSUED BY THE BOARD OF RAILWAY COMMISSIONERS

52506. Dec. 4—Declaring C.N. Rys. crossing of Fifth Street, Red Deer, Alta., protected to Board's satisfaction.

52507. Dec. 5—Declaring C.P.R. crossing of Regent Street, Sudbury, Ont., protected to Board's satisfaction.

52508. Dec. 4—Declaring Esquimalt & Nanaimo Ry. crossing of Church Road north of Parkerville Station, B.C., protected to Board's satisfaction.

52509. Dec. 5—Declaring C.P.R. crossing south of station platform at St. Hyacinthe, Que., protected to Board's satisfaction.

52510. Nov. 30—Authorizing Ottawa Electric Ry. to operate its cars at a greater speed than 10 miles an hour in or through villages between westerly limits of city of Ottawa and westerly terminus of its line.

52511. Dec. 4—Approving plan showing interlocking plant installed at crossing of C.N.R. by C.P.R. at Coldwater, Ont.

52512 Dec. 4—Approving location of combination passenger and freight shelter to be erected by C.N. Rys. at Alderdale, Ont.

52513. Dec. 5—Directing C.P.R. to install automatic bell and wigwag at crossing of highway immediately north of Labuma, Alta.

52514. Dec. 5—Directing C.P.R. to install automatic bell and wigwag signals at crossing at Okotoks, Alta.

52515. Dec. 4—Directing that cost of constructing and maintaining highway crossing over C.N. Rys. on road allowance east of SW ½ of Sec. 8-54-7 W3M., Sask., be paid by Sask. Dep't of Highways.

52516. Dec. 4—Directing that cost of constructing and maintaining highway crossing over C.N. Rys. on surveyed road in SW ¼ of Sec. 17-54-7 W3M., Sask., be paid by Sask. Dep't of Highways.

52517. Dec. 5—Refusing application Rural Mun. of Webb No. 138 for an Order placing on C.P.R. cost of maintenance of crossing between sections 1 and 2-14-18 W3M., at Antelope, Sask.

52518. Dec. 4—Refusing application of Sask. Dep't of Highways on behalf of Rural Mun. of Swift Current No. 137 to reopen question of apportionment of cost of maintaining public crossing over C.P.R. west of Sec. 30-15-14 W3M., Sask.

52519. Dec. 4—Approving abandonment of portion of C.N. Rys. Otterville Subd'n between Burgessville, mile 31·0, and Woodstock, mile 40·2, Ont.

52520. Dec. 10—Authorizing C.P.R. to file on one day's notice cancellation of charges provided for in item 38, second revised page 24-A of Tariff C.R.C. No. E. 4126 covering dock storage at Sault Ste. Marie, Ont.

52521. Dec. 7—Extending until May 15, 1936, time within which C.P.R. may install bell and wigwag at crossing two miles north of Wetaskiwin, Alta.

52522. Dec. 9—Declaring C.N. Rys. crossing, first west of Laurier, Que., protected to Board's satisfaction.

52523. Dec. 7—Declaring C.P.R. crossing one mile east of Superb, Sask., protected to Board's satisfaction.

52524. Dec. 9—Extending until May 15, 1936, time within which C.P.R. may install bell and wigwag at crossing immediately east of Erskine, Alta.

52525. Dec. 9—Extending until May 15, 1936, time within which C.P.R. may install bell and wigwag at crossing one mile west of Crow's Nest Station, Alta.

52526. Dec. 7—Extending until May 15, 1936, time within which C.P.R. may install bell and wigwag at crossing east of Carbon, Alta.

52527. Dec. 7—Amending Order 52160, Aug. 16, 1935, by striking out paragraph 4 and substituting in lieu thereof clause directing that cost of maintaining subway, including drainage, be borne and paid 50 per cent by C.N. Rys. and 50 per cent by Ont. Dep't Highways.—Plains Road Subway, Burlington Jct., Ont.

52528. Dec. 7—Declaring C.N. Rys. crossing, first east of station at St. Cyr, Que., protected to Board's satisfaction.

52529. Dec. 9—Declaring C.P.R. crossing north of Coutts Yards, Alta., protected to Board's satisfaction.

52530. Dec. 9—Declaring C.N. Rys. crossing, second east of St. Philippe, Que., protected to Board's satisfaction so long as speed limitation of 20 miles an hour is maintained.

52531. Dec. 10—Authorizing Mun. of Escuminac, Co. Bonaventure, Que., to construct crossing over C.N. Rys. on St. Anthony Road, mile 21·38 Cascapedia Subd'n.

52532. Dec. 10—Authorizing C.P.R. to construct spur to serve Huntley Manufacturing Co., at Tillsonburg, Ont.

52533. Dec. 9—Declaring C.P.R. crossing, first north of Jelly Station, Ont., protected to Board's satisfaction.

52534. Dec. 10—Amending Order 52471, Nov. 19, 1935, by striking out figures "6·3" in preamble and substituting therefore figures "6·8", and by striking out words "mileage 6·3 Laggan Subd'n, in City of Calgary" in third and fourth lines of paragraph 1 and substituting therefore the words "mileage 6·8 Laggan Subd'n, in Mun. Dist. of Springbank No. 221".

52535. Dec. 11—Approving location of C.N. Rys. proposed fourth class station to be erected at Denholm, Sask.

52536. Dec. 7—Extending until May 15, 1936, time within which C.P.R. may install bell and wigwag at Bowness Park Road, mileage 6·8 Laggan Subd'n, Alta.

52537. Dec. 11—Declaring C.P.R. crossing two miles west of Innerkip Station, Ont., protected to Board's satisfaction.

52538. Dec. 13—Declaring C.N. Rys. crossing one mile east of Ste. Cecile, Que., protected to Board's satisfaction.

52539. Dec. 13—Declaring C.P.R. crossing, first east of Halbrite Station, Sask., protected to Board's satisfaction.

52540. Dec. 12—Declaring Montreal & Southern Counties Ry. crossing of Cowie Street, Granby, Que., protected to Board's satisfaction.

52541. Dec. 15—Declaring C.P.R. crossing one-half mile east of Moose Jaw (College Crossing), Sask., protected to Board's satisfaction.

52542. Dec. 14—Extending until May 15, 1936, time within which C.P.R. may install bell and wigwag at crossing immediately north of Labuma, Alta.

52543. Dec. 10—Approving agreement between Bell Telephone Co., and Comm'rs for Telephone System of Mun. of Tp. of Chinguacousy.

52544. Dec. 10—Approving service station contract between Bell Telephone Co. and Stoke Telephone Association.

52545. Dec. 16—Authorizing C.N. Rys. and C.P.R. to file supplements to C.N. Rys.' tariffs C.R.C. No. E-853 and C.R.C. No. E-2008, and C.P.R. tariffs C.N.R. No. E-4624 and C.R.C. No. E-4625, advancing effective date of non-application of milling in transit in connection with water competitive rates to Levis, Quebec, Sorel and Trois Rivières, Que., which expired Nov. 30, 1935.

52546. Dec. 13—Declaring C.P.R. crossing, third south of LaSalle Station, Man., protected to Board's satisfaction.

52547. Dec. 14—Declaring C.P.R. crossing, second south of St. Gabriel Station, Que., protected to Board's satisfaction.

52548. Dec. 14—Declaring C.N. Rys. crossing, second east of Fesserton, Ont., protected to Board's satisfaction.

52549. Dec. 14—Declaring C.N. Rys. crossing, second east of Baden Station, Ont., protected to Board's satisfaction.

52550. Dec. 14—Declaring C.N. Rys. crossing 2·61 miles west of St. Thomas, Ont., protected to Board's satisfaction.

52551. Dec. 12—Authorizing C.P.R. to construct wye tracks in north half of Sec. 2-11-21 W4M., at Picture Butte, Alta.

52552. Dec. 14—Extending until May 15, 1936, time within which C.P.R. may install bell and wigwag at crossing in Okotoks, Alta.

52553. Dec. 16—Declaring C.P.R. crossing at mileage 1·0 St. Guillaume Subd'n, near Farnham Station, Que., protected to Board's satisfaction.

52554. Dec. 13—Approving service station contract between Bell Telephone Co. and Belvidere Telephone Syndicate.

52555. Dec. 13—Approving service station contract between Bell Telephone Co. and Bellevue Telephone System.

52556. Dec. 13—Approving service station contract between Bell Telephone Co. and Dormin Brock Telephone Line.

52557. Dec. 13—Approving service station contract between Bell Telephone Co. and Key Brook Telephone Ass'n.

52558. Dec. 12—Approving service station contract between Bell Telephone Co. and Fourth Range Telephone Ass'n.

52559. Dec. 13—Approving service station contract between Bell Telephone Co. and Ives Hill Telephone Ass'n.

52560. Dec. 13—Approving service station contract between Bell Telephone Co. and the Huntingville Telephone Ass'n.

52561. Dec. 13—Approving service station contract between Bell Telephone Co. and the Milby Telephone Ass'n.

52562. Dec. 13—Approving service station contract between Bell Telephone Co. and the Mountain View Telephone Ass'n.

52563. Dec. 13—Approving service station contract between Bell Tel. Co. and Orford Telephone Ass'n.

52564. Dec. 13—Approving agreement between Bell Telephone Co., and Leslie Davis (Rankin Telephone Co.).
52565. Dec. 13—Approving agreement between Bell Telephone Co., and Compagnie de Téléphone de Sherbrooke-Est.
52566. Dec. 16—Relieving C.P.R. from maintaining cattle guards at five crossings on its Port McNicoll Subd'n, Tps. Ops and Tay, Ont.
52567. Dec. 16—Approving Supplement "F" to Express Classification for Canada No. 8, to be published as Supplement No. 6.
52568. Dec. 16—Declaring C.N. Rys. crossing, first north of Sudbury Jct., Ont., protected to Board's satisfaction.
52569. Dec. 16—Declaring C.N. Rys. crossing, being first west of Nixon Stn., Ont., protected to Board's satisfaction.
52570. Dec. 16—Authorizing C.N. Rys. to reconstruct 80-foot span of bridge over Red Deer River, on Rosedale Co's spur at Rosedale, Alta.
52571. Dec. 13—Refusing application of City of Victoria, B.C., for removal of differential over Vancouver in freight rates on apples, for export, through the Port of Victoria.
52572. Dec. 17—Declaring C.N. Rys. crossing, first east of St. Bruno, Que., protected to Board's satisfaction.
52573. Dec. 17—Declaring C.N. Rys. crossing, first west of Drummondville, Que., protected to Board's satisfaction.
52574. Dec. 17—Relieving C.P.R. from maintaining cattle guards at 11 crossings on its MacTier Subd'n, Ont.
52575. Dec. 19—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tariffs filed by C.N. Rys. under sec. 3.
52576. Dec. 19—Authorizing Sask. Dep't Highways to construct highway crossing over C.N. Rys. in NW¼, Sec. 8-46-17 W2M., Sask.
52577. Dec. 17—Directing New York Central Ry. to install double bells and wigwag signals, in lieu of lightning flash signals, at crossing of Victoria Ave., Ridgetown, Ont.
52578. Dec. 20—Declaring C.N. Rys. crossing of Egerton Street, London, Ont., protected to Board's satisfaction, subject to speed limitation of ten miles an hour and movements over crossing to be flagged by member of train crew.
52579. Dec. 19—Amending Order 31947, Dec. 22, 1921, to provide that gates be operated from 7.00K to 24.00K from May 1 to Sept. 15, each year, from 7.00K to 19.00K from Sept. 16 to April 30, each year.—Winnipeg Street Ry. and C.P.R. crossing of Selkirk Avenue, Winnipeg, Man.
52580. Dec. 23—Declaring C.P.R. crossing of Waterloo Street, London, Ont., protected to Board's satisfaction.
52581. Dec. 20—Declaring C.N. Rys. crossing of Ste. Marguerite Street, Montreal, Que., protected to Board's satisfaction.
52582. Dec. 21—Directing C.N.Rys. to install automatic bell and wigwag at crossing of Highway No. 11, Parish Colborne, N.B.
52583. Dec. 21—Directing C.N. Rys. to install automatic bell and wigwag at crossing of Highway No. 8, Parish St. Mary's, Co. York, N.B.
52584. Dec. 21—Directing C.N. Rys. to install automatic bell and wigwag at Mortimer Crossing, one mile north of Harcourt, N.B.
52585. Dec. 21—Directing C.N. Rys. to install automatic bell and wigwag at crossing of Highway No. 8 at Blissfield, N.B.
52586. Dec. 21—Directing C.N. Rys. to install automatic bell and wigwag at crossing of Highway No. 2, at Anagance, N.B.
52587. Dec. 21—Directing C.N. Rys. to install automatic bell and wigwag at crossing of Highway No. 11, at Jacquet River, N.B.
52588. Dec. 21—Directing C.N. Rys. to install automatic bell and wigwag at crossing of Highway No. 8, at Underhill, N.B.
52589. Dec. 20—Refusing application of Brotherhood of Locomotive Firemen and Enginemen for an Order requiring all railway companies to change location of steam whistles on locomotives.
52590. Dec. 23—Declaring C.P.R. crossing 1·5 miles west of Claremont Station, Ont., protected to Board's satisfaction.
52591. Dec. 23—Authorizing Quebec Central and C.N. Rys. to operate their trains over crossing at Carrier, Que.
52592. Dec. 23—Relieving C.P.R. from maintaining cattle guards at crossings at mileage 100·6 and 113·98, Nipigon Subd'n, Ont.
52593. Dec. 23—Relieving C.P.R. from maintaining cattle guards at crossings at mileage 1·74 and 4·18, Adirondack Subd'n, Que.

52594. Dec. 23—Relieving C.P.R. from maintaining cattle guards at crossings at mileage 5·7, 6·8, 7·9 and 10·9, Listowel Subd'n, Ont.
52595. Dec. 23—Relieving C.P.R. from maintaining cattle guards at crossings at mileage 63·3, 65·1, 65·7, 66·8, 67·7 and 68·2, Owen Sound Subd'n, Ont.
52596. Dec. 23—Relieving C.P.R. from maintaining cattle guards at crossings at mileage 36·2, 51·4 and 52·5, Maple Creek Subd'n, Sask.
52597.
52598. Dec. 28—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in tariffs Nos. 736 and 737 filed by Témiscouata Ry. under sec. 9.
52599.
52600. Dec. 28—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in tariffs and supplements filed by Dominion Atlantic Ry. under sec. 9.
52601.
52602.
52603.
52604. Dec. 28—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in tariffs and supplements filed by C.P.R. under sec. 9.
52605. Dec. 27—Declaring C.N. Rys. crossing of Welland-Port Colborne Highway just west of Welland Jct., Ont., protected to Board's satisfaction.
52606. Dec. 27—Declaring C.P.R. crossing of Jeanie Street, Pakenham, Ont., protected to Board's satisfaction.
52607. Dec. 21—Declaring C.N. Rys. crossing south of Richmond Hill, Ont. (Langstaff Crossing), protected to Board's satisfaction.
52608. Dec. 26—Declaring British Columbia Electric Ry. crossing of Garden Drive, Vancouver, B.C., protected to Board's satisfaction.
52609. Dec. 28—Declaring C.P.R. crossing of Franktown Road, south of Carleton Place, Ont., protected to Board's satisfaction so long as speed limitation of 10 miles an hour is maintained at all points where Franktown Road crosses C.P.R. in Carleton Place.
52610. Dec. 26—Approving abandonment of operation of Orono Subd'n. of C.N. Rys. from Ronnac to Greenburn, Ont., 41·8 miles.
52611. Dec. 26—Authorizing Mun. of Ste. Therese de Gaspé to construct crossing over C.N. Rys. at mileage 57·48, Chandler Subd'n, Que.
52612. Dec. 21—Authorizing C.N. Rys. to construct subway approximately 615 feet west of existing grade level crossing at St. George Road, Grand'Mère, Que.
52613. Dec. 30—Authorizing City of Port Moody, B.C., to construct crossing over C.P.R. at mileage 2·3, Port Moody Branch.
52614. Dec. 30—Approving Bell Telephone Co's revised Tariff of Long Distance Tolls C.R.C. No. 6711, upon condition that similar action be taken by telephone companies in United States.
52615. Dec. 31—Authorizing C.N. Rys. to remove their agent at Nut Mountain, Sask. (caretaker to be appointed).
52616. Dec. 31—Declaring C.P.R. crossing just west of Thamesford Station, Ont., protected to Board's satisfaction.
52617. Dec. 31—Declaring C.P.R. crossing of John Street, Arnprior, Ont., protected to Board's satisfaction.
52618. Jan. 2—Declaring C.P.R. crossing of Cremazie Road, St. Laurent, Que., protected to Board's satisfaction.
52619. Dec. 23—Directing that 40 per cent of cost of lengthening ringing circuits of automatic electric bells at crossings of Norwich and Wilson streets, Woodstock, Ont., be paid out of Railway Grade Crossing Fund.
52620. Dec. 30—Authorizing City of Port Moody, B.C., to construct highway crossing over C.P.R. at mileage 1·6 Port Moody Branch, B.C.

FEB 8 1936

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXV Ottawa, February 1, 1936 No. 23

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Application of the Canadian Pacific Railway Company for an Order granting it leave to abandon the operation of that portion of the Orford Mountain Railway (known as Orford Subdivision of the Canadian Pacific Railway Company) between mile ·9 International Boundary between the State of Vermont and the Province of Quebec, and mile 22·8 (Eastman), a distance of 21·9 miles. File No. 39309

JUDGMENT

COMMISSIONER STONE:

The interpretation as placed on section 35 of the Railway Act by the Deputy Chief Commissioner in his Judgment in this case, if correct, precludes the Board from authorizing any abandonment of lines of railway; and section 165A, which became effective May 23, 1933 (Chap. 47, 23-24 Geo. V) could not be made applicable to any railway company to which a subsidy had been granted and paid under a subsidy contract.

It cannot logically be presumed that Parliament intended any such limitation should be placed on the power conferred. Therefore, I am not in accord with the Judgment of the Deputy Chief Commissioner, nor his conclusions as based on the facts submitted in this case.

Various judgments have been issued by the Board granting applications for abandonment of lines since section 165A was enacted. The question as to whether abandonment should be allowed was determined by the circumstances in each case. No principle is defined by the Railway Act upon which the Board should be governed in dealing with such cases; and, as stated in previous judgments, it is not the function of the Board to pass upon the constitutionality or validity of legislation whether Dominion or provincial.

The line involved in this application serves a territory thinly settled and partly farmed, and is bounded on the east by Lake Memphremagog, on the west by the Drummondville and Newport Subdivisions, on the north by the Sherbrooke Subdivision and is joined at the south by the Newport Subdivision—all lines of the Canadian Pacific Railway, and while the application applies to 21·9 miles of line between the International Boundary and Eastman, P.Q., at the hearing held at Mansonville on June 26, 1935, counsel for the applicant explained that part of the line between mile 16 and mile 21·9 would, for the present, be retained as a spur to a ballast pit located at mile 16, and this portion would be reconditioned for service as and when required.

The population as reported by the Dominion Bureau of Statistics for Canada is shown as follows:—

	1871	1881	1891	1901	1911	1921	1931
Bolton E.	2,878	2,306	2,383	1,509	1,456	1,232	1,436
Bolton W.		929	891	770	774	746	675
Potton	2,178	2,380	2,253	1,978	1,941	1,971	1,882
Eastman Village	....	....	....	630	607	704	474

NOTE: Exhibit No. 10 filed by Mr. R. F. Cowan, secretary-treasurer of the municipality of Potton, showed the number of persons residing in the municipality on June 30, 1934, including women and children as 1,835; and the number of farmers, proprietors and lessees as 244.

From the above it will be noted that the population has decreased in recent years.

The evidence submitted in connection with this application shows that there has been substantial operating deficits regardless of drastic reductions made in train service and curtailment of maintenance costs, which gave some relief for the years 1933-34. The following statement shows the car movements for the period enumerated:—

Year	In	Out	Total
1931	124	214	338
1932	99	200	299
1933	65	130	195
1934	58	266	324
1935 Jan. to May inc.	23	119	142

Itemized statements show that there was a greater percentage of outbound car movements from points between Eastman and South Bolton than from other points on this branch line, and that the shipments consisted principally of lumber, ties, cordwood, pulpwood, logs and slabs.

The inward car movements consisted of hay, flour, feed, limestone, fertilizer, gasolene, etc., and were consigned principally to Mansonville, which is located two and one-half miles from Highwater Station on the Newport Subdivision of the Canadian Pacific Railway.

No revenue for mail service was received by the railway since the year 1932; and the earnings from passenger and express business was listed as follows:—

	Passenger	Express
1931	$683 00	$341 00
1932	478 00	172 00
1933	170 00	100 00
1934	313 00	91 00
1935 Jan. to May inc.	152 00	33 00

In a statement listed on sheet No. 7 filed by the applicant, it was shown that in the first five-month period of 1935 revenues decreased to $7,975 as compared with $14,748 for the same period in 1934; and total car loadings dropped to 142 as compared with 249 for the same period in 1934; and evidence was furnished to show that much of the business formerly handled by the railway was now transported by motor truck.

In connection with shipments from the butter factory which is located at Mansonville, Mr. Lafreniere gave the following evidence:—

"Q. What quantity of butter do you ship?—A. Approximately 10,000 boxes of 65 pounds each.

"Q. Do you deal with the truck company?—A. No.

"Q. You have your own truck?—A. Yes.

"Q. How much do you pay to ship your butter to Montreal by truck—how much does it cost you?—A. About $20 per load; my load is about six tons."

The DEPUTY CHIEF: He included wear and tear in that price.

Mr. GIROUX:

"Q. Why do you not ship by the railroad?—A. Too expensive.

"Q. How much would it cost you for a load of six tons?—A. It costs 90 cents per 100 pounds.

"Q. From Mansonville or from Highwater?—A. From both places.

"Q. The same load would cost him $108.00 on the railroad that he pays $20.00 for on his own truck. That is the reason you move your butter to Montreal by your truck?—A. I asked for special rates and could not obtain them."

Evid. Vol. 624, p. 1990.

It was explained that the witness referred to express charges, as by freight it took too long for butter to reach its destination, and contended he could operate his own truck seven to eight months out of the year.

In connection with the bobbin business statement was submitted as Exhibit No. 8 which showed that in 1934 Mr. D. H. Taylor, South Bolton, shipped 57·1 tons by rail and 75·6 tons by motor truck; and Mr. C. A. Randall, Bolton Center, shipped 27·6 tons by rail and 72·1 tons by motor truck and up to June, 1935, a slight difference in favour of rail, Mr. Taylor having shipped 46·7 tons by rail as against 41 tons by motor truck, while Mr. Randall shipped for the same period 66·2 tons by rail as against 45·6 by motor truck. The total car movements of bobbins by rail were listed as follows:—

	1931	1932	1933	1934	1935
Mansonville	4	1	4	10	2
South Bolton	..	5	2	5	4
Bolton Center	..	1	..	1	..

It will be noted from the above statements that the shipments are exceptionally light. The evidence also showed there was a substantial movement by motor truck of logs from Peasley to North Troy, State of Maine.

Major L. D. McLintock, Agronomist, when giving evidence referred to this country being lumbered over very extensively a few years ago, and that a lot of the farming land is exceedingly poor owing to the lack of lime in the soil. *Evid. Vol. 624, P. 1986.* He also pointed out the detrimental effect the abandonment of the line would have on the population in the immediate vicinity affected, and the prospect for increase in second growth of hardwood ten or fifteen years hence. No suggestion was made as to how the operating deficits of the railway could be overcome.

The question of railway business increasing with the return of more prosperous times is more or less speculative. When the Canadian Pacific Railway commenced operation in the year 1910 it is reasonable to assume that all parties to the legislation and agreements contracted in the interest of public service anticipated this line of railway would become the only carrier of freight and passenger traffic in the territory served.

With the introduction of the automobile, and later the auto-truck and autobus, combined with improved highways, the railway business gradually diminished until heavy operating deficits forced operating officials to curtail previous train service, and in recent years reduce maintenance costs to the minimum in an effort to render as efficient service as possible under the existing financial conditions.

The cost for railway track maintenance is a substantial item against railway transportation charges, and the evidence indicates that the railway cannot compete with the motor truck for short-haul traffic, which was demonstrated by the evidence submitted by Mr. Lafreniere.

The salvage value of material on that portion of the line from mile 0·95 to mile 16 is shown as $32,545.00 and, as previously stated, the line between the ballast pit at mile 16 and Eastman would be retained as a spur to the ballast pit and reconditioned as and when required.

Crawford and Peasley sidings are both located on that portion of the line to be retained. Bolton Center is 7·4 miles from Eastman, and a short distance

from the ballast pit; and South Bolton is three miles south of Bolton Center. From these points the greater proportion of car movements are shipped, which include lumber, cordwood, pulpwood logs, ties, etc. If this portion of the line is continued in operation for car loadings offering it should adequately take care of the business and ease the situation for the farmers who would have a shorter haul for cordwood than would otherwise be the case if the entire line were abandoned.

Passenger traffic shows an exceptionally low annual average, and does not warrant continued train operation. The principal settlement along the line is Mansonville, which is located approximately 2·7 miles by highway from High-water Station on the Newport Subdivision of the Canadian Pacific Railway, over which line a daily double passenger, and adequate freight service in each direction is maintained.

Taking into consideration all the facts involved, I would grant the application to abandon that portion of the line between mile 0·95 and mile 16·0, to become effective ninety days from the date of the Order issues without prejudice to whatever rights or remedies may be open to the parties in the Courts, and that the remainder of the line between mile 16 and Eastman be maintained in serviceable condition to take care of car loadings as and when required.

Ottawa, December 16, 1935.

Commissioner Norris concurred.

Application of the Canadian Pacific Railway Company for an Order granting it leave to abandon the operation of that portion of the Orford Mountain Railway (known as Orford Subdivision of the Canadian Pacific Railway Company) between mile ·9 (International Boundary between the State of Vermont and the Province of Quebec) and mile 22·8 (Eastman), a distance of 21·9 miles. File No. 39309

JUDGMENT

Garceau, F. N., Deputy Chief Commissioner:

This railway was built between 1904 and 1910 by the Orford Mountain Railway Company, incorporated by an Act of the Quebec Legislature.

It was leased to the Canadian Pacific Railway Company in 1909 and operated as part of the Canadian Pacific Railway system from the first of March, 1910.

Subsidies were granted to the Orford Mountain Railway Company under an Agreement dated November 28, 1911, amounting to $70,080; but the Canadian Pacific Railway Company, subsequent to acquiring the line, received only $9,984 on account of that agreement.

Under an agreement dated August 19, 1912, the company received a subsidy of 39,320 acres, which were sold subsequently for $78,640.

The actual service consists of a weekly mixed train on Wednesday.

The operation deficits were: In 1931, $15,960; in 1932, $16,861; in 1933, $13,217; in 1934, $6,321. In 1935, from January 1 to May 31, the revenues amounted to $7,975, as compared with $14,748 for the same period in 1934, being a decrease of $6,773.

I am satisfied that these figures filed by officials of the railway company are correct.

This section of the country crossed by the railway is partly under cultivation and partly covered with timber, in equal proportion. There are approximately 300 farmers who own farms partly under cultivation and partly wooded.

In addition to the products of an important butter industry, lumber, cordwood, bobbins and agricultural products are the commodities shipped on the railway.

If this line were abandoned, the various municipalities would be distant from the nearest railway, as follows: Mansonville, 2·7 miles; Peabody, 5 miles; Travor Road, 7·4 miles; Potton Springs, 10·3 miles; South Bolton, 10·2 miles; Bolton Centre, 7·8 miles; Peasley Siding, 7·2 miles; Crawford Siding, 4·2 miles.

Mr. Robinson, Travelling Freight Agent for the Canadian Pacific Railway, filed a statement (Exhibit 8) showing as far as could be ascertained, the traffic given to the railway and to trucks by three manufacturers: Mr. Fred Perkins, Mr. Taylor and Mr. Randall. It also shows that, although there is only one train a week, nearly 50 per cent of the traffic went to the railways.

In answer to the question: "Can the trucks travel during the winter?" Mr. Robinson says: "Well, apparently not, for it is during this period that we get the rail haul when the roads are completely tied up." (*Evidence, p. 1916.*)

All the witnesses heard for the municipalities concerned agreed that the operation of the railway was an absolute necessity in order to permit the inhabitants of this district to earn a living by shipping on the railway lumber, cordwood and a few other commodities.

I believe that Major L. D. McLintock, Agronomist, summarized the situation properly when he said (p. 1985):—

> "I believe that the abandonment of this railorad, the Orford Mountain Subdivision, would work a very considerable hardship on the farming population of this general area. I believe that the margin of profit on farms is so narrow that the extra hardship involved would really place them on relief and before very long you would have a large number of people flocking to the towns.
>
> "I had the unfortunate or doubtful pleasure of having to dispense free seeds to the farmers. I tell you that in the township of East Bolton, the amount of seed grain, free seed, that we had to give was, I would say, equal to the whole of the rest of the county of Brome. Now that is merely indicative of the hard conditions. We did not give them all they needed.
>
> "There is another point that occurs to me: A few years ago this country was lumbered over very intensively. As you are no doubt aware in travelling around through the country, the hardwood area is rather limited on this continent. England and other countries have come after us for hardwood bobbins, and we are just beginning to wake up to the importance of this part of the country as a source of bobbin material.
>
> "I was talking to Mr. Randall, who is the father of the young man who owns one of the mills at South Bolton, and he told me he was developing a marvellous kind of interest on the part of the English manufacturers in our bobbin trade here. He had a very considerable line of prospective orders in view.
>
> "It seems to me that in the ordinary course of events, in the next ten years there should be a great increase in the available wood supply in this country. It is growing up again. Ten or fifteen years will make a tremendous difference in the second growth of hardwood.
>
> "Now then, too, a lot of the farming land is exceedingly poor owing to the lack of lime in the soil. This was recognized by the Quebec Government to the extent that they are ready to pay up to $1.30 a ton on the transport of lime. It is true that only a very few carloads of lime have come into this part in the last few years, but the interest is gradually increasing. That was owing to the indifference of the farmers. A gentleman here told me the other day that he wishes he could buy a carload of lime for himself. We were not talking about the railroad then, he was just saying what he would like to do. It is my impression that, if we are to expect things to develop, which I hope will be within the next two or three years, we will have anywhere from 20 to 30 carloads of lime coming

down this subdivision in a year. We have, I should say, 3 to 5 carloads coming in now. I do not think I am over-estimating it when I increase that to anywhere up to pretty nearly ten times that amount.

"The DEPUTY CHIEF: What about the timber or cordwood industry?—A. I believe it has a wonderful future.

"Q. And if the railroad is not operating?—A. I believe if the railroad were not operating it would be quite all right if the margin of profit is not too small.

"Q. Is it a very important element of convenience?—A. It makes the difference, sir, between success and failure. Any of those industries, any commercial industry—I do not need to tell you—runs upon a small margin. It takes a great volume, and then there is that little difference which makes the essential difference between success and failure, and, believe me, sirs, the margin of difference between success and failure in this country is very precarious indeed—exceedingly so. One thing, do you realize, gentlemen, that they do not sell their cordwood here, they sell their time. This business of hauling cordwood a matter of three or four miles farther is not *the joke* that it would seem to some people who do not realize what it is to have to haul that difference. It means time, and these men are doing nothing more or less than selling their time at present."

. . . .

"My personal opinion, as a disinterested party only interested in the progress of the farmers here, is that the loss of this railroad would be a very serious blow to the farmers, particularly in East Bolton in the northern part of the province."

The witness goes on to explain why the public uses the trucks. I shall quote his words:—

"They are using it (the railway) consistent with the exigencies of the service. They would use it more." . . . "The public here have such a small margin of profit and they are running so close to ruin all the time (that is literally) that any little advantage they can get they are forced to take. They do not discontinue the use of railroads out of spite."

This point of view is corroborated in one way or another by all the witnesses heard: Mr. Crawford, Mr. Peasley, Mr. Giroux, Mr. Harter, Mr. Cowan, Mr. Raquepas, Mr. Fleury, etc.

It was established by Mr. Fleury that the population of this section of the country is about the same as it was forty years ago and that under normal conditions there would be the same traffic or more as existed previously.

We may assume that, in 1909 and 1910, when the Canadian Pacific Railway leased that railway for 999 years, it was aware of the conditions of the country, its traffic possibilities and was satisfied that in taking over that line it would undertake a paying proposition. Enough is known of the careful management of the Canadian Pacific Railway at all times to assume that the company expected to operate the line profitably.

Since five years we are passing through abnormal conditions. Traffic has decreased almost 50 per cent since 1929 and we may expect that these conditions are only transitory.

Moreover, every public utility, like individuals, must try to carry on, even at a sacrifice, to permit recovery of normal conditions.

The statements indicate that traffic was heavier in 1934 than in 1933. It is true there seems to be a decrease in the first months of 1935, but since then conditions have improved materially and it is not preposterous to expect that even 1935 will be better than 1934.

I am impressed by the evidence given by Major McLintock. Being an Agronomist of experience, he is in a better position than anybody else to ascertain the whole situation and especially that of the farmers; how much they rely on the sale of a few cords of wood in order to balance a very lean budget. It is for many of them, the only cash that they can have to buy necessities, which their farm does not produce. They receive so little for their wood that they are selling only their time.

My personal experience with the farmers during many years permits me to appreciate and acknowledge the truth of Mr. McLintock's assertion. The manufacturers of that region might carry on without the railway but it would be at the expense of the producer, the farmer; for, it is most probable that the Eastern manufacturer could not sell the products at a higher price and would carry on by giving the same price to the farmer for a longer haul.

Even if it were doubtful that the abandonment would have disastrous results for the farmers living in this section of the country, I believe that such a risk ought not to be taken. We must give the public the benefit of the doubt.

There is too much unemployment, there are too many people in towns and cities and, if we cannot induce a back-to-the-land movement, we must at least —being the authority constituted by Parliament to insure to the public a proper and essential service by the railways—try by our decisions to maintain on their farms the actual farmers or, at least, not give a decision that may break up homes and result in a flocking of farmers to cities, increasing the number of unemployed on relief.

It is my sincere conviction that public interest would be better served by compelling the railways to carry on even at a loss than by granting their application.

The actual conditions will surely improve. Besides, competition by trucks, buses, automobiles, will be regulated in the near future, and then the railways can expect a revenue to wipe out their deficits.

The Congress of the United States enacted such regulation and here in Canada, the Duff Commission urgently recommended it. It was also endorsed by the automotive transportation industry: (Mr. J. B. Baillargeon (see *Ottawa Journal*, September 12, 1935); Mr. Chappell, General Superintendent of Canadian National Railways at Vancouver—(see *Ottawa Citizen*, September 3, 1935); Mr. McDonnell, President and General Manager, Canadian Pacific Railway Express—(see Montreal *Gazette*, October 17, 1935).

The railway company filed two agreements, one made on November 28, 1911, with the Government of Canada, and the other made on August 19, 1912, with the Government of the Province of Quebec. In both agreements, they contracted obligations. In the first contract, the obligation as to train service reads as follows:—

> "10. That upon and after the completion of the said line of railway the company shall faithfully and continuously operate and run the same, maintaining the said railway and all structures thereof and equipment thereof in good, safe and substantial order and condition, to the satisfaction of the Governor in Council.
>
> "11. That the Company shall, at all times, run two local trains daily, one in each direction, and such local trains shall, for the accommodation of the public, stop at all local stations; and the Company shall extend such train service to such extent and in such manner as the Governor in Council may, by Order in Council, direct for the accommodation of the public.

"12. That upon and after the completion of the works contemplated by this agreement the said line of railway and all property, real and personal, appertaining thereto, together with the franchises, rights and privileges connected therewith, shall vest in and become the property of the Company, subject, however, *to covenants herein contained thereafter to be observed and performed.*"

In the Agreement of 1912, regarding the running of trains, it was contracted as follows:—

"E. The said company shall be bound, after the completion of the works on its subsidized line as above described and required, to constantly maintain the same in good order and condition as well as the rolling stock required for the regular running of trains in accordance with the needs of traffic and of the travelling public; and it further binds itself to operate such railway without interruption and to faithfully fulfil this obligation subject to all lawful charges and responsibilities;

"F. The land subsidy above mentioned shall be granted or conceded in the manner above indicated, solely under such conditions as the Lieutenant-Governor in Council may determine to assure the right of running, and the traffic arrangements, as well as all other rights calculated to procure the said company, party of the second part, or its assigns, all possible accommodation and facilities and equal running rates with and upon all other railways connecting with the line belonging to the company, party of the second part;

"G. It is also agreed that the said railway line and the works dependent thereon as well as all the rights, privileges, immunities, personal and real property of any kind whatsoever, belonging to the said company, party of the second part, shall after the completion of the said line of railway and of the works connected therewith, be deemed to be the property of the said company, subject to the charges and obligations above specified and which would become applicable should occasion arise."

The Canadian Pacific Railway Company is subject to the rights and obligations of the Orford Mountain Railway Company. It is true that the railway is a public utility, a public service and, as such, under the control of the Board of Railway Commissioners as to the operation of trains, the facilities and accommodation to be provided for the public, etc. But, it is also a corporate body, a moral person, and as such can contract and such contracts bind the railway just as they would bind an individual.

These contracts are the law between contracting parties. Can a party to a contract be relieved of his obligations because the contract is a losing proposition? There is no court that would annul a contract on such grounds, unless it could be proved that the party contracted through error, fear or fraud. Why should the railway be granted leave to cancel or violate a duly made contract?

This railway was subsidized by both governments in order to assure a railway service to the population of this section of the country. These subsidies were paid not for the purpose that the railways profit but for the special purpose of rendering service to the public, even at a loss. It was a commercial enterprise and it carried the risk of profit and loss.

Under section 35 or the Railway Act, the Board has the judicial discretion to enforce a contract as far as it may seem reasonable and expedient to do so. It reads thus:—

"....The Board shall hear all matters relating to such alleged violation or breach and shall make such Order as to the Board may seem reasonable and expedient, and in such Order may in its discretion direct the company or such corporation or person to do such things as are necessary for the *proper fulfilment* of such Agreement or to *refrain* from doing such acts as constitute a violation or a breach thereof."

In other words, the Board has the discretionary powers to enforce any contract but the power to sanction the violation of a contract is not included.

The jurisdiction of the Board is contained within the dispositions of the Railway Act or any special act which specifically gives any authority to the Board, but nowhere, at least as far as I know, is there a disposition granting the Board the power to sanction by a positive act—a judgment—the violation of a contract of a public nature.

Until such time as Parliament, having in view public interest, passes a law permitting this tribunal to override such duly contracted obligations, it is my candid opinion that we cannot justify and authorize the violation of a contract which means its cancellation as far as service is concerned.

When the legislator enacted section 165 (*a*), which reads as follows:—

> "The company (railway) may abandon the operation of any line of railway with the approval of the Board and no company shall abandon the operation of any line of railway without such approval."

he knew of the jurisdiction of the civil courts and of the Railway Board and enacted this Section precisely to protect the public against any abandonment when the railway was at liberty to do so, as it was so often ruled by the Board.

It must be remembered that in this special circumstance, the Board is asked to relieve by a positive act—an order—the railway of its obligations and the only disposition of section 35 is to give a judicial discretion to the Board to enforce or to prevent a breach or a violation of a contract.

There is a wide margin between the discretion to enforce a contract or to sanction and order its violation, especially when the violation means a cancellation of the physical obligations contracted.

The right of the railways to abandon lines was studied and discussed in Rossland Board of Trade vs. Great Northern Railway Co. The judgment of the Assistant Chief Commissioner (C.R.C. vol. 28, p. 24) quotes a memo from the Board's Legal Department, which reads in part as follows:—

> "Unless the failure to operate is in violation of an agreement on the part of the company, there is no provision in the Railway Act dealing with a case where the company ceases to operate, except where it goes into insolvency. The Great Northern Railway Company appears to be operating the Bedlington and Nelson, as the owners of or having a controlling interest in the stock of the Canadian company, and operate under the name and as the Bedlington and Nelson Railway. There is no record of any amalgamation agreement between the two companies."

In the same judgment, at p. 29, it is said:—

> "The matter was again before the Board in 1919, Board's file No. 1333, what was involved being the discontinuance of the train service on the Phoenix Branch of the V.V. & E. Railway, Grand Forks to Phoenix. On direction, the railway was advised by letter from the secretary as follows:—
>
> "'That where the company has decided to abandon entirely the operation of its line of railway and take up the rails, as is proposed in the present instance, unless such action is in breach of an agreement to operate, there is no provision of the Railway Act under which the Board can restrain the company from doing so. This was the conclusion arrived at in the case of the Bedlington and Nelson Railway (file No. 25461). The new Act does not enlarge the powers of the Board in this regard.'"

And, at p. 32:—

> "It has seemed proper to set the matter out at some length, as there have been evident misunderstandings of the limitations of the Board's powers. Very earnest pleas have been made. It is represented that the

discontinuance of the service is a matter of very serious moment to Rossland. It is unfortunate that the business activities of Rossland are not as satisfactory as they once were, and there is no escaping the conclusion that the discontinuance of the railway service will exercise an adverse effect. At the same time, leaving aside any question as to whether, if the Board had jurisdiction it would be justified on the merits in ordering the service to be continued, the plain fact is that the Board *has no jurisdiction so to order.*"

This decision establishes the absolute right for the railways to abandon lines without the consent of the Board unless prevented from doing so by the Incorporation Act or by contracts; so we may conclude that section 165 (*a*) was enacted later to give authority to the Board to prevent any abandonment that would inflict too much inconvenience on the public. In other words, it was enacted for the public and in order to restrict the discretion of the railways regarding abandonments where they were not specifically bound to operate, for the Board had then authority under Section 35 to enforce the contract or special act.

This being so, the Board having only judicial discretion to make an order for specific performance of agreements (Montreal and G.T.R.—25 C.R.C. p. 448), cannot under the same section make an order violating specific agreements.

In the case of Municipal District of Strathcona, Alberta (South Edmonton) vs. C.N.R. (35 C.R.C., p. 9), it was decided:—

"That R.S.C. 1927, c. 170, s. 35, being an invasion of a field lying within the scope of the jurisdiction of the Courts should be *strictly construed* and that authority to approve the agreement in question *was not within the wording of the section.*"

Section 35 reads, in part, as follows:—

". . . *shall* hear all matters relating to such alleged violation or breach, and shall make such order as to the Board may seem reasonable and expedient, and in such order may, in its discretion, direct the company or such corporation or person, to do such things as are necessary for the proper fulfilment of such agreement, or to refrain from doing such acts as constitute a violation or a breach thereof."

There is nothing equivocal: the only authority is to enforce agreements when deemed expedient.

The Board has always contended that its judgments did not sanction a violation of any agreement; it has affirmed the contrary.

I would refer to the case of C.N.R. vs. Goldstone, Board's Judgments, Orders, Regulations and Rulings, vol. 18, p. 29, in which case the application was granted because replacing the station agent by a caretaker was not considered a violation of the agreement involved, which agreement was to erect and maintain a permanent freight and passenger station. Reference is made therein to the case of Wallace vs. Great Western Railway, 25 Grant's Chancery Reports, and Mr. Commissioner McLean made a distinction between the latter case and London and Lake Erie Transportation Co. vs. Certain Township Municipalities, in which case Mr. Commissioner Mills and Chief Commissioner Drayton dismissed the application of the railway company which asked to be relieved of its contractual obligations. He did not disagree with the ruling given by the above mentioned Commissioners; his distinction, on the contrary, seems to accept the principle maintained in that decision. He said:—

"The caretaker whom it is desired under this application to install, will perform services greater than were performed at the station of Avening, in the Nottawasaga case. In that case, Hagerty, C.J., at

p. 66, recognized, 'that as to the station in question, it is still maintained, although in a state of reduced efficiency.' The words in question are pertinent here. It may be recognized that, from the standpoint of the public, there is not as great efficiency with the caretaker as there is in the case of a regular agent, but the lesser efficiency so rendered does not mean that there is not a station in existence and operation.

"The installation in the present instance of a caretaker, appears to me to be justified on the facts, and I do not consider that the action proposed is a violation of the agreement involved."

There is also the legal axiom: "Inclusio unius" (discretionary power to enforce, protect) "fit exclusio alterius" (power to violate per order).

Public interest could not prevail before the enactment of this section 165 (*a*); the contract or special act were the only protection together with section 35.

Parliament by passing section 165 (*a*), having left section 35 as it was, meant that the Courts would deal with the special obligations as far as abandonment was concerned, before the railways could ask the Board to abandon any line for reason of greater inconvenience to them or to the public.

Even implicit and moral obligations were formerly considered binding on the railways and a bar to abandonment—*vide* C.P.R.'s McAuley Subdivision, Board's Judgments, etc., vol. 23, p. 303:—

"On the hearing a witness, Alex MacDonald, filed a chart (Exhibit No. 8) showing the district tributary to Manson. The railway company was required to file, and did file, a detailed statement of the lands sold by it in the vicinity. I have had this list checked with the chart (Exhibit No. 8) and find that within this district the Canadian Pacific Railway Company sold 17,280 acres of land and, in addition, sold the Manson Townsite.

"It can be argued with some force that these purchases were made on the implied representation by the company that the line in question would continue to operate and that it would be entirely unfair to these purchasers to permit the company at the present time to abandon this line.

"When the line from McAuley to Virden was completed in 1913, a letter was written to the Board by the secretary-treasurer of Manson asking whether there was any truth in the rumour that the Canadian Pacific Railway Company was contemplating the abandonment of its line from Kirkella to McAuley. The Board communicated the inquiry to the railway company which replied that "while we would certainly like to take up the line between Kirkella and McAuley no steps will be taken towards doing this *until satisfactory arrangements are made with the people of Manson.*" If this condition were reasonable in 1913, it is certainly much more reasonable to-day."

The following excerpts from the Agreements of 1911 explain more fully the nature of the obligations and their binding force under section 153:—

"Between His Majesty the King, represented by the Minister of Railways and Canals (referred to herein as "the Minister") acting by virtue of an Order in Council dated the twenty-first day of October, 1911, of the first part; and Orford Mountain Railway Company, hereinafter called "the company," of the second part.

"Whereas the company was authorized to build the railway hereinafter mentioned by the Act or Acts following, namely: Quebec, 1888, c. 98; 1889, c. 4; 1895, c. 2; 1899, c. 4; 1902, c. 2; Canada, 1901, c. 79; 1902, c. 87, and 1911, c. 124.

"And whereas by an Act of the Parliament of Canada, 6-7 Edward VII, chapter 40, entitled "An Act to authorize the granting of subsidies in aid of the construction of the lines of railway therein mentioned," hereinafter referred to as "the Subsidy Act," it was in the 1st section thereof enacted:—

'The Governor in Council may grant a subsidy of $3,200 per mile towards the construction of each of the undermentioned lines of railway (not exceeding in any case the number of miles hereinafter respectively stated) which shall not cost more on the average than $15,000 per mile for the mileage subsidized; and towards the construction of each of the said lines of railway, not exceeding the mileage hereinafter stated, which shall cost more on the average than $15,000 per mile for the mileage subsidized, a further subsidy beyond the sum of $3,200 per mile of fifty per cent on so much of the average cost of the mileage subsidized as is in excess of $15,000 per mile, such subsidy not exceeding in the whole the sum of $6,400 per mile.'

"And whereas by paragraph 15 of the said 1st section of the Subsidy Act, a line of railway was mentioned and designated, in the following words, towards the construction of which such subsidy or subsidies might be granted, namely:—

'To the Orford Mountain Railway Company, for the following lines of railway, namely, ... "from Mansonville to the International Boundary, 3·12 miles; . . . . . in lieu of the subsidies granted by Chapter 57 of 1903, section 2, item 50, but not exceeding in the whole 27 miles.'

"It is therefore covenanted and agreed by and between His Majesty, represented as aforesaid, for Himself and His Successors, and the company for itself, its successors and assigns, as follows, namely:—

"1. That the company shall, well, truly and faithfully, make, build, construct and complete the line of railway mentioned and described in paragraph 15 of the 1st section of the Subsidy Act, as above set forth and recited, and all bridges, culverts, works and structures appertaining thereto in all respects in accordance with the specifications hereto annexed marked "A," or with such amendments thereof as may from time to time during the progress of the said work be approved by the Governor in Council.

. . . . .

"8. That the company shall in all respects comply with and abide by, and the said line of railway shall be subject to all the provisions of the Subsidy Act, and of any other Acts of Parliament applicable thereto, as fully and to the same extent as if such provisions were set out at length herein.

"9. That upon the performance and observance by the company, to the satisfaction of the Governor in Council, of the foregoing clauses of this agreement, His Majesty will, in accordance with and subject to the provisions of sections one, two and four of the Subsidy Act, pay to the company so much of the subsidy or subsidies, hereinbefore set forth or referred to, as the Governor in Council having regard to the cost of the work performed shall consider the company to be entitled to, in pursuance of the said Act.

. . . . .

"12. That upon and after the completion of the works contemplated by this agreement the said line of railway and all property, real and personal, appertaining thereto, together with the franchises, rights and privileges connected therewith, shall vest in and become the property of the company, *subject, however, to covenants herein contained thereafter to be observed and performed.*"

In my previous remarks, I dealt with the bearing on the decision of the Board of a duly made contract not of a private nature but concerning the public and the railways as public carriers.

We are faced in this case not only with an agreement made between the Government of Canada and a public carrier, the railway, but with the dispositions of a special act, the Subsidy Act, and all the provisions of this Agreement must be considered to the same extent as if such provisions were set out at length in the said act.

The annexed Order in Council duly authorized by the said Act and the forms and schedules attached to the said Orders in Council corroborate this proposition.

This is the special Act, in my opinion, mentioned in section 3 of the Railway Act, which reads as follows:—

"3. Except as in this Act otherwise provided—

(*a*) this Act shall be construed as incorporate with the special Act; and

"(*b*) where the provisions of this Act and of any special Act passed by the Parliament of Canada relate to the same subject-matter the provisions of the special Act shall, in so far as is necessary to give effect to such Special Act, be taken to over-ride the provisions of this Act."

I would go further and say that this is certainly not an act of a private nature contemplated by Honourable G. Blair in his dictum above quoted (4 C.R.C. 69). When the Board has authority to enforce an agreement, even of a private nature, I question whether it ought not to enforce it, in order to prevent an injustice from being done.

I submit that this agreement, even if not a Special Act, is an agreement contemplated by section 153 (2) of the Railway Act, which reads as follows:—

"(2) In the case of an agreement for amalgamation, as to all acts, matters and things so done, effected or confirmed, and as to all such rights, liabilities, claims and demands, the amalgamated company shall, for all purposes stand in the place of and represent the companies who are parties thereto and the generality of the provisions of this section shall not be deemed to be restricted by any Special Act, unless this section is expressly referred to in such Special Act, and expressly limited or restricted thereby."

I refer to Order in Council of the 13th July, 1907, attached; also, to the last part of paragraph 12 of the Agreement, "subject however to covenants contained thereafter to be observed and performed."

Section 33 says:—

"(1) The Board shall have full jurisdiction to inquire into, hear and determine any application by or on behalf of any party interested,

"(2) . . . *and shall for the purposes of this Act have full jurisdiction to hear and determine all matters whether of law or of fact.*"

Section 34 says:—

> "The Board may make orders or regulations
>
> "(*a*) with respect to any matter, act or thing which by this or the special act is *sanctioned, required to be done,* or *prohibited.*
>
> "(*b*) generally for carrying this Act into effect."

I repeat: we have at least, if not a special Act, an agreement sanctioned and acknowledged as binding the parties, by a special disposition of the Railway Act—Section 153.

The Board has full jurisdiction to hear and determine all matters whether of law or of fact and make orders with respect to any matter, act or thing which by this or the special act is sanctioned, required to be done. Besides, it is the function of the Board to carry out this Act into effect, and a special Act or a contract of a public nature over which the Board has jurisdiction must be considered, in my opinion, incorporated with this Act.

"Where the language of a statute is clear and unambiguous, a court cannot go outside the four corners thereof to construe it. The words of this section not being ambiguous should not be interpreted by a reference to a previous legislation upon the subject." (30 C.R.C., p. 207, Ouellette v. C.P.R., Supreme Court Judgment). Section 153 is not ambiguous.

When the Board has overridden or cancelled a contract to operate a railway, with due deference to conflicting opinions, I submit that there is no adequate remedy left before the civil courts.

The right to enforce the specific performance of a duly made contract is one of the prerogatives of a contracting party and the decision of the Board being supreme as to an abandonment, the courts cannot offer such remedy as the performance of the contract. Even the rights to damages would be jeopardized.

It is an acknowledged principle of law and it is expressly declared in section 1065 of the Civil Code that "the creditor may, in cases which admit of it, demand also a specific performance of its obligation."

Before the Railway Act was passed, the courts had the right to issue prerogative writs to enforce such obligations on the railways but now such powers belong to the Board and not to the courts.

I will add: no civil court could consider the application of the railway for the cancellation of its contractual obligations sanctioned by law because this contract was proving a loss.

The Board has not the authority to cancel a contract embodied in a special act or part of a special act or duly made under the authority of a special act any more than any court, unless there is a special statute to that effect. It can, in the cases contemplated by section 35 abstain from enforcing the contract. The sanctity of contracts is an acknowledged principle except when the legislator himself, in view of public weal has given discretionary powers to the tribunals as in the Bankruptcy Act, etc.

It is argued that the above contentions would be right if there were not section 165 (*a*) which reads as follows:—

> "A company may abandon the operation of any line of railway with the approval of the Board and no company shall abandon the operation of any line of railway without such approval."

I submit that this section is only remedial in so far as it restricts the rights of the railway to abandon when they were not previously obliged to have the permission of the Board to abandon. If we read the section we see that it does not react or reflect on any existing statutory dispositions, that it does not infringe on any vested rights.

Section 15 of the Statute of Interpretation, Chapter 1, Revised Statutes of Canada, 1927, says:—

> "Every Act and every provision and enactment thereof shall be deemed remedial, whether its immediate purport is to direct the doing of any thing which Parliament deems to be for the public good, or to prevent or punish the doing of any thing which it deems contrary to the public good; and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act and of such provision or enactment, according to its true intent, meaning and spirit."

It gives to the Board the judicial discretion that it lacked before in the absence of statutory or contractual dispositions, to prevent the railways from abandoning and that is all.

These contentions do not conflict with any of the rulings of the Supreme Court in the following cases:—

> Montreal Park & Island Co. vs. City of Montreal, 11 C.R.C. 254;
> Grand Trunk Pacific Railway Co. vs. City of Edmonton, 15 C.R.C. 445.

Let us consider first 11 C.R.C., p. 254: "It has ruled the Board should have admitted the evidence so tendered in regard to the agreement in consideration of which the special rates of fares have been granted."

The dissenting judges would have dismissed the appeal because the contract was infringing on the authority of the Board, sections 314, 316, 317 and 319 of the Railway Act.

It is a legal axiom that no convention can derogate from the dispositions of the law; besides there is a special provision—subsection 7 of section 316—"Any agreement made between two or more companies contrary to this section shall be unlawful and null and void."

The only inference to be reached is that a contract infringing on the authority of the Board is not binding on the Board, though it can be considered as evidence and help to come to a conclusion.

The other case, G.T.R. Co. vs. City of Edmonton, 15 C.R.C., p. 445. The Supreme Court had to decide: 1. "Was the Board bound by the agreement between the City of Edmonton and the G.T.P. Ry? 2. If it was so bound, do the provisions of section 7 of the agreement mean that the railway should not pay such expense as is placed upon it by the Board's order?"

The answer was negative; even, that the order did not violate the agreement. Moreover, it infringed on the authority of the Board and was an agreement of a private nature such as referred to by Chief Commissioner Blair, 4 C.R.C., p. 69:—

> "This is not, as we have stated, a court for the adjustment of disputes arising out of agreement entered into by parties respecting questions wholly personal to themselves, or at least of a private rather than a public nature; and we must again emphasize the opinion that it is not within our province, in administering the Act which constitutes the Board, to attempt to provide remedies or afford relief in cases in which said relief and said remedies can better be afforded by the ordinary tribunals of the country."

This is the view I took in my judgment in the Interprovincial Bridge Case, because the courts could enforce the agreement; but, in this instance, the courts cannot enforce the agreement.

On the 8th November, 1935, Mr. Commissioner Stone rendered a judgment in file No. 39309.3 (Application of the Canadian Pacific Railway to close part of its Shore Line Subdivision, in New Brunswick) in which judgment concurred the Assistant Chief Commissioner and Mr. Commissioner Norris, granting the abandonment.

My previous contentions do not conflict with the judgment in that case and I agree that " the question whether abandonment of operation shall be allowed must be determined by the circumstances in each case."

In that case, special obligations for the railway to operate had been imposed by provincial statute, but the Shore Line Company which had become owner of that line and was subject to the obligations imposed when the line was built by a previous company, went into bankruptcy and the property was sold by the Master in Chancery and turned over to the New Brunswick Southern Railway Company which was incorporated in 1901.

This company leased the railway to the Canadian Pacific in 1910.

The previous contractual obligations were not imposed by nor mentioned in the Act of Incorporation of 1901 or in the lease to the Canadian Pacific Railway.

The applicant justly said, through its attorney:—

> "It cannot seriously be argued that such a lien (mortgage and the obligation towards the New Brunswick Government) exists after express legislative sanction has been given to the sale of the railways with all the rights, powers, privileges and immunities of the company and without reference of any kind to pre-existing liabilities of the company itself or of its predecessor in title."

In this case, as there is no question as to the actual existence of the contractual and statutory obligations, the Board is, at the exclusion of the civil courts, the tribunal to deal with these obligations.

Abandonment, even when not prohibited by any legal instrument, must be looked on with disfavour. It means the destruction of costly assets, hardships to communities, loss of jobs to many, demoralization to those affected, and with possible indefinite reactions against public weal.

The railways can show their actual operation deficit but it is impossible for the public to put before a tribunal all the consequences of the abandonment, the losses and handicap it will have to bear, the depreciation of property, the desertion of the population towards more-favoured centres. Who can determine the precise factor, moral or material, which gives a man the will to carry on? And, what is the national problem? To solve unemployment, to keep the man at his job, to provide work for the wandering youth, for everybody fit to work, to restore faith and hope in the future. Abandonment is the negation of this aim.

The railway, on the ground that it suffered losses which in 1934 were around $6,000, petitioned the Board, a tribunal constituted by Parliament to assure to the public proper railway service, for leave to cancel its covenanted pledge of permanent service; it is the same railway which, in 1913, agreed: " That no steps will be taken towards doing this (abandonment) until satisfactory arrangements are made with the people of Manson." What has happened since to interpret otherwise its duty to the public?

What has happened since 1934 when the full Board declared that " If this condition were reasonable in 1913, it is certainly much more reasonable to-day."

A proper control of highway carriers, better economic conditions, can turn the actual loss of the railway into profit; but, what of the farmer unable to stand the greater hardship that would result from the abandonment? What of the man deprived of his job?

How much of the $6,000 will be economized at the expense of labour? If we consider the experience made by the Canadian National Railways during 1933 (see report 1933, p. 5) we may assume that labour will contribute more than 80 per cent of the amount saved.

In this case, there is decisive consideration. The people must continue to believe that "There are judges at Berlin" to protect its vested rights. This faith is one of the greatest of national assets.

Relief to the difficulties of the railways lies with themselves and with Parliament, as expressed by the Interstate Commerce Commission (Ex parte 115, p. 70) (*mutatis mutandis*):—

> "The answer to the problem before us will be found (1) in the return of a normal condition of business activity and movement, to be achieved only through continued and patient co-operation of carriers and shippers, with the thought of present profit submerged for the moment, even to the point of *personal sacrifice* in the interest of the speedier resumption of better conditions for all; and (2) by such prompt action on the part of Congress as will insure that competition between the various forms of transport agencies be on equal and fair terms, with the welfare of a national transport machine as the objective."

AUTHORITIES

21 Canadian Railway Cases, p. 211; City of Hamilton v. Grand Trunk Railway Company.

"A specific breach of an agreement must be shown to give the Board jurisdiction under 8 and 9 Edw. VII, ch. 32, sec. 1."

25 Grant's Chancery Reports, p. 62; Goyeau v. Great Western Railway Co. Contracts.

16 Ontario Appeal Reports, p. 52; Corporation of the Town of Nottawasaga v. Hamilton & Western Railway Co.—Contracts.

I would dismiss the application.

December 3, 1935.

Requête de la compagnie du chemin de fer Canadien du Pacifique, demandant qu'une ordonnance soit rendue l'autorisant à discontinuer l'exploitation de la partie de sa ligne Orford Mountain (connue comme sa Subdivision d'Orford Mountain) qui s'étend du mille .9 (à la frontière internationale entre l'Etat du Vermont et la province de Québec) au mille 22.8 (Eastman) soit un parcours de 21.9 milles.

Dossier N° 39309.

JUGEMENT

STONE, COMMISSAIRE:

L'interprétation donnée à l'article 35 de la Loi des chemins de fer par le Commissaire en chef suppléant dans son jugement en cette cause empêche, si elle est juste, la Commission d'autoriser toute discontinuation d'exploitation de lignes de chemin de fer; et l'article 165-A qui est devenu en vigueur le 23 mai 1933 (chap. 47, 23-24 Geo. V) ne saurait s'appliquer à nulle compagnie de chemin de fer à qui on aurait accordé et payé des subsides aux termes d'un contrat.

On ne saurait logiquement présumer que le Parlement a eu l'intention de restreindre ainsi les pouvoirs conférés à la Commission, et c'est pourquoi je ne saurais être d'accord avec le jugement du Commissaire en chef suppléant ni avec ses conclusions telles que basées sur les faits présentés en cette cause.

Depuis que l'article 165-A a été adopté, la Commission a rendu divers jugements accordant des requêtes d'abandon d'exploitation de lignes. La question de savoir si la Commission devait autoriser l'abandon d'exploitation était déterminée par les circonstances, dans chaque cas. La Loi des chemins de fer ne définit pas de principe devant guider la Commission pour juger de tels cas; et, tel que mentionné dans des jugements précédents, il n'appartient pas à la Commission de juger de la constitutionnalité ou la validité de la législation, qu'elle soit fédérale ou provinciale.

La ligne dont il s'agit dans la présente requête dessert un territoire très peu peuplé et en partie en culture, et est borné au nord-est par le Lac Memphremagog, à l'ouest par les subdivisions de Drummondville et de Newport, au nord par la subdivision de Sherbrooke et se raccorde au sud avec la subdivision de Newport—toutes ces lignes faisant partie du réseau du chemin de fer Canadien du Pacifique—et, tandis que la requête concerne une ligne d'un parcours de 21.9 milles entre la frontière internationale et Eastman, P.Q., le procureur de la requérante, lors de l'audition qui eut lieu à Mansonville le 26 juin 1935, expliqua que la partie de la ligne qui s'étend du mille 16 au mille 21.9 serait, pour le moment, maintenue en exploitation comme voie accessoire jusqu'à une sablière de ballast située au mille 16, et que cette partie serait remise en état d'exploitation lorsqu'il en sera requis.

Le chiffre de la population tel que fourni par le Bureau de la Statistique du Canada est donné comme suit:—

	1871	1881	1891	1901	1911	1921	1931
Bolton E.	2,878	2.306	2,383	1.509	1,456	1,232	1,436
Bolton O.	....	929	891	770	774	746	675
Potton	2,178	2,380	2,253	1,978	1,941	1,971	1,882
Village d'Eastman ...	....	....	....	630	607	704	474

A NOTER.—L'exhibit N° 10 produit par M. R.-F. Cowan, Secrétaire-trésorier de la municipalité de Potton, indiquait que le nombre de personnes résidant dans la municipalité à la date du 30 juin 1934, y compris les femmes et les enfants, était de 1,835 et le nombre des cultivateurs, propriétaires et locataires de 244.

On notera d'après les données ci-dessus que la population a diminué au cours des dernières années.

La preuve soumise en rapport avec la présente requête démontre qu'il y a eu des déficits importants dans l'exploitation de cette ligne malgré les fortes réductions de dépenses dans le service des trains et la réduction dans les frais d'entretien, lesquelles ont apporté quelque soulagement au cours des années de 1933 et 1934. L'état suivant indique les mouvements de wagons au cours de la période mentionnée:—

Année	Wagons entrés	Wagons sortis	Total
1931	124	214	338
1932	99	200	299
1933	65	130	195
1934	58	266	324
1935 (jan. à mai in.)	23	119	142

Les états détaillés montrent qu'il y a eu un plus fort pourcentage dans le nombre des wagons partis d'endroits entre Eastman et Bolton-Sud que d'autres endroits situés sur cet embranchement et que ces expéditions consistaient surtout en bois de charpente, traverses, bois de corde, bois de pulpe, billes et croûtes.

Les wagons qui entraient contenaient de l'avoine, de la farine, du fourrage, de la pierre à chaux, des engrais chimiques, de l'essence, etc., et avaient surtout comme point de destination Mansonville qui se trouve à deux milles et demi de la station de Highwater sur la subdivision de Newport du chemin de fer Canadien du Pacifique.

La compagnie du chemin de fer n'a retiré aucun revenu du service des postes depuis l'année 1932, et les recettes provenant du trafic des voyageurs et des messageries ont été établies comme suit:—

	Recettes provenant des voyageurs	Recettes provenant des messageries
1931	$683 00	$341 00
1932	478 00	172 00
1933	170 00	100 00
1934	313 00	91 00
1935 (jan. à mai in.)	152 00	33 00

Dans l'état indiqué sur la feuille N° 7 produite par la requérante, on constate que pour la période des cinq premiers mois de 1935, les revenus ont diminué jusqu'à $7,975 alors qu'ils étaient de $14,748 pour la même période en 1934; et le nombre total des chargements de wagons est descendu à 142 comparé à celui de 249 pour la même période en 1934, et on a fourni de la preuve pour démontrer qu'une grande partie du trafic qui était autrefois transporté par le chemin de fer l'était maintenant par les camions.

Pour ce qui est des expéditions de beurre venant de la fabrique de Mansonville, M. Lafrenière témoigna comme suit:

D. Quelle est la quantité de beurre que vous expédiez?—R. A peu près 10,000 boîtes de 65 livres chacune.

D. Faites-vous affaire avec la compagnie de camions?—R. Non.

D. Vous avez vos propres camions?—R. Oui.

D. Combien payez-vous pour expédier votre beurre à Montréal par camion? combien ça vous coûte-t-il?—R. Environ $20.00 par chargement; mon chargement comprend environ six tonnes.

Le Commissaire en chef suppléant: Il a inclus l'usure dans ce prix.

M. Giroux: Pour quelle raison n'expédiez-vous pas par le chemin de fer?—R. Parce que c'est trop dispendieux.

D. Combien vous en coûterait-il pour un chargement de six tonnes? —R. Ça coûte 90 cents les 100 livres.

D. De Masonville ou de Highwater?—R. Des deux endroits.

D. Le même chargement lui coûterait $108.00 par le chemin de fer au lieu de $20.00 en utilisant son propre camion. C'est pour cette raison

que vous transportez votre beurre à Montréal dans votre camion?—R. J'ai demandé que l'on m'accorde des tarifs spéciaux et je n'ai pas pu les obtenir. (Preuve, vol. 624, p. 1990).

On a expliqué que le témoin se référait aux tarifs des messageries vu que les expéditions de beurre par fret prenaient trop de temps pour parvenir à destination, et on a prétendu qu'il (le témoin) pouvait utiliser son propre camion durant sept à huit mois de l'année.

Pour ce qui concerne le transport des produits des fabriques de bobines, on a soumis comme exhibit n° 8 un état montrant qu'en 1934 M. D.-H. Taylor, de Bolton-Sud, en avait expédié 57.1 tonnes par chemin de fer et 75.6 tonnes par camion; que M. C.-A. Randall, de Bolton-Centre en avait expédié 27.6 tonnes par chemin de fer et 72.1 par camion, et qu'à venir jusqu'à juin 1935, il y avait eu une légère différence en faveur du chemin de fer, M. Taylor ayant expédié 46.7 tonnes par chemin de fer et 41 tonnes par camion, tandis que M. Randall avait expédié durant la même période 66.2 tonnes par rail et 45.6 par camion. Le nombre total de wagons avec chargements de bobines a été indiqué comme suit:—

	1931	1932	1933	1934	1935
De Mansonville..	4	1	4	10	2
De Bolton-Sud..	—	5	2	5	4
De Bolton-Centre..	—	1	—	1	—

On notera par les états ci-dessus que les expéditions ont été plutôt très peu considérables. La preuve a aussi démontré qu'il y avait un transport assez considérable de billes par camion, de Peasley à North Troy, dans l'Etat du Maine.

Le major L. D. McLintock, agronome, en rendant témoignage fit allusion à cette région comme ayant été, il y a quelques années, fort boisée, ajoutant que nombre de terres agricoles étaient excessivement pauvres à cause du manque de chaux dans le sol. (Preuve, Vol. 624, p. 1986). Il signala l'effet néfaste que produirait sur la population, dans le voisinage immédiat affecté, la discontinuation d'exploitation de cette ligne, de même que les perspectives d'augmentation dans la production du bois dur par une seconde croissance d'ici à dix ou quinze ans. On n'a pas fait de suggestions quant aux moyens à prendre pour combler les déficits d'exploitation.

La question d'augmentation du trafic ferroviaire avec le retour de conditions meilleures est une chose sur laquelle on peut plus ou moins compter. Lorsque le chemin de fer Canadien du Pacifique a commencé ses opérations en l'année 1910, il est raisonnable de supposer que toutes les parties concernées dans la législation et le contrat intervenus dans l'intérêt du service public prévoyaient que cette ligne de chemin de fer constituerait le seul moyen de transport des marchandises et des voyageurs dans le territoire desservi.

Avec l'apparition des automobiles, et plus tard des camions et des autobus, avec les grandes routes améliorées, les transports par chemin de fer ont graduellement diminué au point qu'à la suite de déficits considérables d'exploitation, les compagnies de chemin de fer furent forcées de faire des retranchements dans le service de leurs trains et de réduire, au minimum, durant les dernières années, les frais d'entretien en s'efforçant de procurer autant que possible au public un service efficace et convenable dans les conditions financières actuelles.

Le coût d'entretien d'une ligne de chemin de fer constitue un facteur important en rapport avec les taux de transport par rail, et la preuve démontre que le chemin de fer ne peut pas entrer en concurrence avec le camion pour le trafic à courte distance, et ce, conformément au témoignage rendu par M. Lafrenière.

La valeur utilisable des matériaux sur cette partie de la ligne qui s'étend du mille 0.95 au mille 16, est indiqué comme étant de $32,545.00 et, comme on l'a déjà dit, la ligne de chemin de fer entre la sablière de ballast au mille 16 et

Eastman, sera maintenue en exploitation comme voie accessoire et remise en état d'exploitation lorsqu'il en sera requis.

Les voies d'évitement Crawford et Peasley sont toutes les deux situées sur cette partie de la ligne qui doit être maintenue en exploitation. Bolton-Centre est à 7.4 milles d'Eastman et très peu éloigné de la sablière de ballast; et Bolton-Sud est à trois milles au sud de Bolton-Centre. La majeure partie des wagons qui transportent du bois de charpente, du bois de corde, du bois de pulpe, des traverses, etc., partent de ces endroits. Si l'on continue d'exploiter cette partie de la ligne, ceci devrait suffisamment prendre soin des besoins du trafic et aider les cultivateurs qui auraient une plus courte distance à parcourir pour transporter leur bois de corde qu'il en serait si toute la ligne était abandonnée.

L'état du trafic des voyageurs indique une moyenne annuelle exceptionnellement basse, et ne justifie pas la continuation d'un service de trains. Le principal endroit situé le long de la ligne est Mansonville, qui est à une distance par route d'à peu près 2.7 milles de la station de Highwater, sur la subdivision Newport du chemin de fer Canadien du Pacifique, sur laquelle est maintenu un service quotidien de deux trains de voyageurs allant dans les deux directions, ainsi qu'un service suffisant pour le transport des marchandises.

Prenant en considération tous les faits impliqués dans cette cause, j'accorderais la requête pour l'abandon de la partie de la ligne qui s'étend du mille 0.95 au mille 16.0, cette décision devant prendre effet quatre-vingt-dix jours après la date de l'émission de l'ordonnance, sans préjudice aux droits ou remèdes que les parties intéressées peuvent faire valoir devant les tribunaux civils, le reste de la ligne à partir du mille 16 à Eastman devant être maintenu en bonne condition pour prendre soin des chargements de wagons lorsqu'il en est requis.

Ottawa, le 16 décembre 1935.

Le Commissaire Norris s'est rallié au jugement ci-dessus.

Requête de la compagnie du chemin de fer Canadien du Pacifique, demandant qu'une ordonnance soit rendue l'autorisant à discontinuer l'exploitation de la partie de sa ligne Orford Mountain (connue comme sa subdivision d'Orford) qui s'étend du mille .9 (à la frontière internationale entre l'Etat du Vermont et la province de Québec) au mille 22.8 (Eastman), soit un parcours de 21.9 milles.

Dossier N° 39309

JUGEMENT

Garceau, F. N., Commissaire en chef suppléant:

Cette ligne de chemin de fer fut construite au cours des années de 1904 à 1910 par la compagnie de chemin de fer Orford Mountain, laquelle fut incorporée par une loi de la Législature de Québec.

Elle fut louée à la compagnie du chemin de fer Canadien du Pacifique en 1910 et exploitée à partir du 1er mars 1910 comme faisant partie du réseau du C.P.R.

Des octrois ont été accordés à la compagnie de chemin de fer Orford Mountain en vertu d'un contrat en date du 22 novembre 1911 pour un montant de $70,080; mais la compagnie du chemin de fer Canadien du Pacifique après l'acquisition de cette ligne ne reçut que la somme de $9,984 par suite de ce contrat.

En vertu d'un contrat en date du 19 août 1912, la compagnie reçut un octroi de 39,320 acres de terre qui furent vendus subséquemment pour la somme de $78,640.

Le service actuel consiste en un train mixte une fois par semaine qui circule le mercredi.

Les déficits d'exploitation furent en 1931, de $15,960; en 1932, de $16,861; en 1933, de $13,217; en 1934, de $6,321. En 1935, du 1er janvier au 31 mai, les revenus se sont élevés à la somme de $7,975, comparé à la somme de $14,748 pour la même période en 1934, soit une diminution de $6,773.

Je suis convaincu que ces chiffres fournis par la compagnie du chemin de fer sont exacts.

Cette région traversée par le chemin de fer est en partie en culture et en partie boisée et ce, en proportion égale. Elle comprend environ 300 cultivateurs qui sont propriétaires de terrains dont une partie est en culture et l'autre boisée.

En outre des produits d'une fabrique importante de beurre, le bois de charpente, le bois de corde, et des produits agricoles et de filature, sont les produits expédiés sur ce chemin de fer.

Si l'exploitation de cette ligne était discontinuée, les municipalités suivantes se trouveraient éloignées de la ligne de chemin de fer la plus rapprochée d'une distance, à savoir: Mansonville, de 2.7 milles; Peabody, de 3 milles; Route Travor, de 7.4 milles; Potton Springs, de 10.3 milles; South Bolton, de 10.2 milles; Bolton Centre, de 7.8 milles; Peasley Siding, de 7.2 milles, et Crawford Siding, de 4.2 milles.

M. Robinson, l'agent de transport des marchandises du C.P.R. a produit un état du trafic (Exhibit N° 8) montrant, comme on pourra le constater, le trafic fourni au chemin de fer et aux camions par trois manufacturiers, à savoir: MM. Fred Perkins, Taylor et Randall. Cet état fait voir aussi, bien qu'il n'y ait qu'un train par semaine, qu'à peu près 50% du trafic va au chemin de fer.

M. Robinson, en réponse à la question qui lui fut posée: "Est-ce que les camions circulent l'hiver?" a répondu: "Bien, apparemment non, car c'est durant cette période que nous pouvons expédier par le chemin de fer alors que les routes sont tout-à-fait impraticables". (Preuve, p. 1916.)

Tous les témoins entendus au nom des municipalités intéressées ont tous été d'accord à déclarer que le service du chemin de fer était d'une nécessité absolue pour permettre aux habitants de cette région de gagner leur vie en expédiant par chemin de fer leur bois de charpente, bois de corde, et quelques autres produits.

Je crois que le major L. D. McLintock, agronome, a bien résumé la situation lorsqu'il s'est exprimé comme suit: (Preuve, p. 1985):

> "Je crois que l'abandon de cette ligne, la subdivision d'Orford Mountain, causerait un tort considérable à la population agricole de cette région en général. Je crois que la marge des profits provenant des produits agricoles est tellement restreinte que les inconvénients additionnels impliqués mettraient certainement les cultivateurs sur le secours direct, et qu'avant longtemps vous seriez les témoins d'un nombre considérable de ces fermiers se dirigeant vers les villes.
>
> "J'ai eu l'avantage discutable d'avoir à distribuer gratuitement des graines de semence aux cultivateurs. Je vous dirai que dans le canton de Bolton-Est la quantité de graines de semence que nous avons distribuée gratuitement était égale à celle distribuée dans tout le reste du comté de Brome; ceci vous montre les conditions difficiles à l'heure actuelle. Nous ne leur avons pas donné tout ce dont ils avaient besoin.
>
> "Il y a une autre chose qui me vient à l'esprit. Cette région, il y a quelques années, en était une excessivement boisée. D'ailleurs, comme vous le savez sans doute, en allant ici et là à travers le pays, les territoires recouverts de bois dur sont plutôt limités sur ce continent. L'Angleterre ainsi que d'autres pays se sont adressés à nous pour se procurer

des bobines en bois dur, et nous sommes justement sur le point de nous réveiller et de comprendre l'importance de cette partie du pays comme source de matière en vue de la fabrication de bobines.

"Je causais avec M. Randall qui est le père d'un jeune homme à qui appartient un des moulins à Bolton-Sud, et il me disait qu'il était à développer chez les manufacturiers anglais un intérêt étonnant pour la fabrication ici de bobines. Il avait en perspective des commandes considérables pour ce genre de fabrication.

"Il me semble que dans le cours ordinaire des événements il devrait y avoir au cours des dix prochaines années une augmentation considérable dans l'approvisionnement du bois dur disponible en ce pays. Ce bois est encore en croissance. Dix ou quinze ans auront une portée considérable dans la seconde croissance du bois franc.

"Maintenant il y a aussi un grand nombre de terres agricoles qui sont excessivement pauvres à cause du manque de chaux dans le sol. Cet état de choses a été reconnu par le gouvernement de Québec au point qu'il a décidé de payer jusqu'à $1.30 la tonne pour le transport de ce produit. Il est vrai qu'il y a eu très peu de wagons avec chargements de chaux qui ont été expédiés dans cette partie de la région au cours des dernières années, mais l'intérêt qu'on porte à ce produit va graduellement en augmentant, et la raison qu'on ne s'en occupait pas était due aux cultivateurs qui étaient tout à fait indifférents. Un certain monsieur ici m'a laissé entendre l'autre jour qu'il voudrait bien lui-même pouvoir acheter un wagon de chaux. Il n'était pas alors question du chemin de fer; il laissait simplement entendre ce qu'il aimerait faire. C'est mon impression que si on doit s'attendre à des événements tendant vers le progrès ce qui, j'espère, se produira d'ici deux ou trois ans, nous aurons 20 à 30 wagons de chaux qui nous viendront chaque année sur cette subdivision. Je pourrais dire qu'actuellement il nous vient dans cette région de 3 à 5 wagons. Je ne crois pas aller au delà de la réalité dans mes calculs, en disant que l'augmentation se traduira par tout près de dix fois le chiffre ci-dessus."

"Le Commissaire en chef suppléant: Que pensez-vous de l'industrie du bois de charpente ou du bois de corde?—R. Je crois qu'elle a en perspective un avenir brillant.

"D. Et si la ligne du chemin de fer n'était plus exploitée?—R. Je crois que si la ligne cessait d'être exploitée les conditions n'en seraient pas trop affectées pourvu que la marge des profits ne soit pas trop réduite.

"D. Considérez-vous cette ligne comme un facteur très important de commodité?—R. Cela fait la différence, monsieur, entre le succès et l'insuccès. Chacune de ces industries, toute industrie commerciale—je n'ai pas besoin de vous le déclarer—opère avec une faible marge. Il faut une grande quantité, et alors il y a cette légère différence qui constitue la différence essentielle entre le succès et l'insuccès, et croyez-moi, messieurs, la marge différentielle entre le succès et l'insuccès est vraiment très précaire en ce pays—excessivement précaire. Une chose à remarquer; réalisez-vous, messieurs, que ces industriels ou commerçants ne vendent pas leur bois de corde ici, ils vendent leur temps. Ce travail de transport du bois de corde sur une distance de trois ou quatre milles de plus n'est pas une plaisanterie comme sembleraient le croire ceux qui ne réalisent pas ce que peut représenter cette distance supplémentaire dans le transport. Cela se traduit par du temps, et ces hommes qui accomplissent ce travail ne font pas, à l'heure actuelle, autre chose, ni plus ni moins, que vendre leur temps."

"D'après mon avis personnel, à titre d'homme tout à fait désintéressé comme ayant à cœur le progrès et l'avancement des cultivateurs d'ici, la disparition de cette ligne causerait énormément de tort aux cultivateurs, surtout aux habitants de Bolton-Est, dans la partie nord de la Province."

Le témoin explique ensuite pourquoi le public se sert des camions. Je citerai ses paroles:—

"Les gens utilisent le chemin de fer en autant que le service les accommode. Ils l'utiliseraient davantage... Ils font si peu de profit et, continuellement (et ce littéralement) exercent leur commerce tellement sous la menace de pertes qu'ils sont forcés d'accepter le moindre avantage qu'ils peuvent obtenir. Ce n'est pas par dépit pour le chemin de fer qu'ils en discontinuent l'usage."

Ce point de vue a été corroboré d'une façon ou d'une autre par tous les témoins entendus: MM. Crawford, Peasley, Giroux, Harter, Cowan, Raquepas, Fleury, etc.

Il a été établi par M. Fleury que la population de cette partie du pays était à peu près la même qu'elle était il y a quarante ans, et qu'en temps normal le trafic serait le même ou plus considérable qu'autrefois.

Nous pouvons présumer qu'en 1909 et 1910, époque à laquelle il loua cette ligne de chemin de fer pour une période de 999 ans, le C.P.R. était au courant des conditions qui existaient dans le pays, des possibilités futures quant à son trafic, et qu'il était convaincu qu'en faisant l'acquisition de cette ligne il entreprenait quelque chose de payant. On connaît suffisamment la manière soigneuse dont le C.P.R. administre son réseau de voies ferrées pour présumer que cette compagnie espérait bien pouvoir exploiter cette ligne avec profit.

Nous avons depuis cinq ans subi des conditions anormales. Le trafic a diminué de presque 50 pour cent depuis 1929, mais nous pouvons espérer que ces conditions ne sont que passagères.

En outre, tous les services publics comme les individus doivent s'efforcer de continuer d'exercer leurs activités, même en faisant des sacrifices, pour permettre des conditions normales.

Les états du trafic qu'on a produits indiquent que les affaires ont été plus considérables en 1934 qu'en 1933. Il est vrai qu'il semble y avoir eu une diminution de trafic durant les premiers mois de 1935 mais, depuis les conditions se sont améliorées considérablement, et il n'est pas déraisonnable de s'attendre à ce que l'année 1935 soit plus prospère que 1934.

J'ai été impressionné par le témoignage rendu par le Major McLintock. Ce monsieur, qui est un agronome d'expérience, est plus en mesure que tout autre pour constater la situation en général et, surtout, celle des cultivateurs; comment ils comptent sur la vente de quelques cordes de bois pour pouvoir balancer leur mince budget. Ce n'est pour plusieurs d'entre eux que le seul argent qu'ils peuvent retirer pour se procurer les choses nécessaires que leurs fermes ne peuvent produire. Ils reçoivent si peu de la vente de leur bois que ce n'est que leur temps qu'ils vendent.

Mon expérience personnelle pour avoir été en contact avec les cultivateurs pendant plusieurs années me permet d'apprécier et de reconnaître la vérité des déclarations de M. McLintock. Les manufacturiers de cette région pourraient poursuivre leurs activités sans l'existence du chemin de fer, mais ce serait aux dépens du producteur, le cultivateur, car il est très probable que le manufacturier de l'Est ne pourrait vendre ses produits à un prix plus élevé et qu'il poursuivrait ses activités en accordant le même prix au cultivateur pour un plus long transport.

Même s'il y avait doute que la discontinuation de l'exploitation de la ligne n'ait des résultats néfastes pour les cultivateurs qui vivent dans cette partie du pays, je crois que l'on ne devrait pas prendre un tel risque. Nous devons accorder au public le bénéfice du doute.

Il y a trop de chômage, trop de monde dans les cités et les villes, et si nous ne pouvons pas induire les gens à retourner à la terre, nous devons au moins—étant l'autorité constituée par le Parlement pour voir à ce que les chemins de fer procurent au public un service de trains convenable et indispensable—essayer par nos décisions à garder sur leurs terres les cultivateurs qui y sont déjà établis, ou, au moins, à ne pas rendre de décision ayant pour effet de briser les foyers avec le résultat que les cultivateurs iraient dans les villes contribuant ainsi à augmenter le nombre des sans-travail qui sont sur le secours direct.

Je suis tout-à-fait convaincu qu'il serait plus dans l'intérêt du public d'obliger le chemin de fer à continuer l'exploitation de sa ligne que d'accorder sa requête.

Les conditions actuelles vont assurément s'améliorer. D'ailleurs la concurrence des camions, des autobus, des automobiles, va être réglementée dans un avenir rapproché alors que les chemins de fer pourront s'attendre à encaisser des revenus pour couvrir leurs déficits.

Le Congrès des Etats-Unis a voté une loi pour cette réglementation et, ici au Canada, la Commission d'enquête Duff l'a fortement recommandée; elle a aussi été approuvée par le commerce de transport par véhicules-moteurs (M. J.-B. Baillargeon)—(voir l'Ottawa Journal du 12 septembre 1935); M. Chappell, surintendant général du C.N.R. à Vancouver—(voir le Citizen d'Ottawa, du 3 septembre 1935); M. McDonnell, président et gérant général du trafic des messageries du C.P.R.—(voir la "Gazette" de Montréal, du 17 octobre 1935).

La compagnie du chemin de fer a produit deux contrats: l'un passé le 28 novembre 1911 avec le gouvernement du Canada, et l'autre, le 19 août 1912, avec le gouvernement de la province de Québec. Dans ces deux contrats les parties concernées ont assumé des obligations. Dans le premier, l'engagement par rapport au service des trains se lit comme suit:

> "10. Que lorsque ladite ligne de chemin de fer aura été parachevée, la compagnie devra fidèlement et continuellement l'exploiter et l'entretenir, de même que maintenir en bonne condition et sains et saufs toutes constructions, appareils et matériel d'exploitation à la satisfaction du gouverneur en son conseil.
>
> "11. Que la compagnie devra en tout temps faire circuler tous les jours deux trains locaux, un dans chaque direction, et que ces trains devront pour la commodité du public arrêter à toutes les stations locales; et la compagnie devra prolonger ce service jusqu'au point et de la manière que le gouverneur en son conseil jugera à propos de l'ordonner par un arrêté-en-Conseil, et ce pour la commodité du public.
>
> "12. Que lorsque les travaux que l'on projette d'accomplir auront été terminés en vertu du présent contrat, ladite ligne de chemin de fer, meubles et immeubles et accessoires ainsi que les franchises, droits et privilèges s'y rapportant, feront partie d'icelle et deviendront la propriété de la compagnie du chemin de fer, subordonnément toutefois aux stipulations contenues dans le présent contrat devant être ensuite observées et mises à exécution".

Dans le contrat passé en 1912 par rapport à la mise en circulation des trains, il est stipulé ce qui suit:—

> "E. Ladite compagnie sera tenue après que les travaux auront été complétés sur sa ligne subventionnée, tel que décrit et exigé ci-dessus, de

maintenir celle-ci constamment en bonne condition, de même que le matériel roulant requis pour la circulation des trains, conformément aux besoins du trafic et du public voyageur et elle s'oblige en outre d'exploiter sa ligne de chemin de fer sans interruption et de remplir fidèlement cette obligation subordonnément à toutes charges légitimes et à toutes responsabilités.

"F. L'octroi en terres ci-dessus mentionné devra être accordé ou concédé de la manière indiquée plus haut seulement en vertu de telles conditions que le gouverneur en son conseil pourra déterminer pour garantir le droit de circulation ainsi que les arrangements à être conclus par rapport au trafic, de même que tous autres droits établis pour procurer à ladite compagnie partie de seconde part, ou à ses ayants droit toutes commodités et facilités possibles avec taux uniformes de circulation sur toutes les autres lignes de chemin de fer faisant raccordement avec la ligne appartenant à la compagnie, partie de seconde part.

"G. Il est aussi convenu que ladite ligne de chemin de fer et les travaux qui en dépendent, de même que les droits, privilèges, exemptions, biens meubles et immeubles de tous genres quels qu'ils soient appartenant à ladite compagnie, partie de seconde part, seront après le parachèvement d'icelle et des ouvrages qui s'y rapportent, reconnus comme étant la propriété de ladite compagnie, subordonnément aux charges et obligations ci-dessus spécifiées et qui devront s'appliquer si l'occasion s'en présente."

La compagnie du chemin de fer Canadien du Pacifique est sujette aux droits et obligations de la compagnie du chemin de fer Orford Mountain. Il est vrai que le chemin de fer est une utilité publique, un service public, et que comme tel il relève du contrôle de la Commission des chemins de fer pour ce qui est du service des trains et des facilités et commodités à procurer au public, etc. Mais il est aussi un corps incorporé, une personne morale, et comme telle en état de contracter et ces contrats lient le chemin de fer de la même manière qu'ils lieraient un individu.

Ces contrats font loi entre les parties contractantes. Une partie à un contrat peut-elle être libérée de ses obligations parce que le contrat lui est une ladite compagnie partie de seconde part, ou à ses ayants-droit toutes cause de pertes. Il n'y a pas de tribunaux qui annuleraient un contrat pour de tels motifs à moins que l'on ne puisse prouver que la partie ait contracté par erreur, crainte ou fraude. Pourquoi accorderait-on au chemin de fer la permission de résilier ou de violer un contrat dûment passé?

Ce chemin de fer a été subventionné par deux gouvernements pour assurer à la population de cette partie du pays un service ferroviaire. Ces subsides ont été payés non pas pour que les chemins de fer fassent des profits, mais surtout pour rendre service au public même en exploitant à perte. La construction de cette ligne fut une entreprise commerciale dont les promoteurs devaient prendre le risque de retirer des profits ou de subir des pertes.

En vertu de l'article 35 de la Loi des chemins de fer, la Commission a le pouvoir discrétionnaire de faire observer un contrat autant qu'il lui paraît raisonnable et opportun de le faire. Cet article se lit comme suit:

"La Commission doit entendre tout ce qui concerne la prétendue violation ou infraction, et rendre l'ordonnance qui lui paraît raisonnable et opportune; et dans ladite ordonnance elle peut, à sa discrétion, ordonner à la compagnie ou à cette corporation ou personne, de faire les choses nécessaires à l'exécution convenable de ce contrat ou de s'abstenir de faire les choses qui en constituent une violation ou une infraction."

En d'autres termes, la Commission a le pouvoir discrétionnaire de faire observer tout contrat, mais le pouvoir d'en sanctionner la violation ne se trouve pas inséré dans l'article.

La juridiction de la Commission est définie dans la Loi des chemins de fer ou toute autre loi spéciale qui lui donne spécifiquement un pouvoir quelconque; mais nulle part ailleurs, autant, du moins, que je sache, existe-t-il une disposition de loi donnant à la Commission le pouvoir de sanctionner par un acte positif—un jugement—la violation d'un contrat d'un caractère public.

D'ici à ce que le Parlement, ayant en vue l'intérêt public, adopte une loi permettant à ce tribunal de passer outre à de telles obligations dûment contractées, c'est mon opinion sincère que nous ne pouvons pas justifier ni autoriser la violation d'un contrat qui signifie ni plus ni moins sa résiliation, en autant que le service est concerné.

Lorsque le législateur a adopté l'article 165-(*a*) qui se lit comme suit:

> "La compagnie (de chemin de fer) peut abandonner l'exploitation de toute ligne de chemin de fer, avec l'approbation de la Commission, et nulle compagnie ne doit abandonner l'exploitation de quelque ligne de chemin de fer sans cette approbation."

il était au courant de la juridiction des cours civiles et de celle de la Commission des chemins de fer, et il adopta cet article précisément pour protéger le public contre tout abandon d'exploitation de lignes que les chemins de fer étaient auparavant libres d'effectuer, conformément à ce que la Commission en avait souvent décidé.

Il ne faut pas oublier que dans la présente cause le chemin de fer demande à la Commission de le libérer de ses obligations par un acte positif, une ordonnance, et que la seule disposition de l'article 35 consiste à donner à la Commission le pouvoir discrétionnaire de faire observer un contrat ou d'en empêcher la rupture ou la violation.

Il y a une grande différence entre le pouvoir discrétionnaire de faire observer un contrat et celui d'en sanctionner et d'en ordonner la violation surtout lorque telle violation équivaut à une annulation d'obligations physiques contractuelles.

Le droit de la part des chemins de fer d'abandonner l'exploitation de leurs lignes a été un sujet d'étude et de discussion dans la cause de la Chambre de Commerce de Rossland vs. Great Northern Railway Co. Le Commissaire en chef adjoint dans son jugement rapporté à C.R.C., vol. 28, p. 24 cite un mémoire du Conseiller juridique de cette Commission, qui se lit en partie comme suit:

> "A moins que le refus de la part de la compagnie de continuer d'exploiter sa ligne ne constitue la violation d'un contrat, il n'existe pas de dispositions dans la loi des chemins de fer portant sur un cas où une compagnie discontinue d'exploiter sa ligne sauf le cas où elle devient insolvable. La compagnie du Great Northern Railway semble exploiter la ligne du chemin de fer Bedlington et Nelson en qualité de propriétaire ou de détenteur de la majorité des actions du capital social de la Compagnie Canadienne, et opère sous le nom de Bedlington et Nelson Railway. Il n'appert pas qu'il y ait un contrat de fusionnement de passé entre les deux compagnies."

Dans le même jugement, à la page 29, il est dit:—

> "La question est venue de nouveau devant la Commission en 1919, —dossier n° 1333; le point en litige étant la discontinuation du service des trains sur l'embranchement Phœnix du V.V. & E. Railway s'étendant de Grand Forks à Phœnix. Sur les instructions de la Commission, le Secrétaire écrivit au chemin de fer dans les termes suivants:—
>
> 'Que dans le cas où la compagnie a décidé d'abandonner complètement l'exploitation de sa ligne et d'en enlever les rails comme elle se propose de le faire dans le cas présent, à moins qu'une telle attitude ne soit en violation d'un contrat concernant l'exploitation, il n'existe pas de

dispositions dans la Loi des chemins de fer en vertu desquelles la Commission peut empêcher la compagnie d'agir ainsi. C'est la conclusion à laquelle en est arrivée la Commission dans la cause du chemin de fer Bedlington et Nelson (Dossier n° 25461). La nouvelle loi n'augmente pas les pouvoirs de la Commission à ce sujet.' "

Et à la page 32:—

"Il a semblé à propos d'exposer les faits au long en cette affaire vu qu'il y a eu évidemment des malentendus quant à la restriction des pouvoirs de la Commission. De forts arguments ont été avancés. On a représenté que la discontinuation du service était une affaire d'une très sérieuse importance pour Rossland. Il est malheureux que la situation des affaires ne soit pas aussi satisfaisante qu'elle l'a déjà été, et nous ne saurions en conclure autrement, que la discontinuation du service du chemin de fer produira un bien mauvais effet. Mettant aussi de côté la question de savoir si la Commission, même en ayant juridiction, serait justifiable selon le mérite de la cause d'ordonner que le service soit continué, le fait évident est que la Commission n'a pas le pouvoir d'en ordonner ainsi."

Cette décision donne aux chemins de fer le droit absolu d'abandonner l'exploitation de leurs lignes sans le consentement de la Commission à moins d'en être empêchés par la Loi d'incorporation ou par contrat; de sorte que nous pouvons conclure que l'article 165-(a) fut adopté plus tard pour donner à la Commission le pouvoir d'empêcher tout abandon d'exploitation de lignes qui causerait au public trop d'inconvénients. En d'autres termes, cet article fut adopté pour protéger le public et pour restreindre la discrétion des chemins de fer relativement à l'abandon de lignes dans les endroits où ils n'étaient pas spécifiquement liés de les exploiter, car la Commission avait alors l'autorité en vertu de l'article 35 de faire observer le contrat ou toute loi spéciale.

Puisqu'il en est ainsi, la Commission qui n'a que le pouvoir discrétionnaire d'émettre les ordonnances en vue de la mise à exécution spécifique de contrats (Montréal et G.T.R.—25 C.R.C., p. 448), ne peut pas en vertu de ce même article rendre des ordonnances en violation de contrats parfaits.

Dans la cause du District Municipal de Strathcona, Alberta, (Edmonton Sud) vs. C.N.R.—(35 C.R.C., p. 9) il fut décidé:—

"Que l'article 35, ch. 170, des Statuts Revisés du Canada de 1927, étant un empiétement sur les pouvoirs conférés aux tribunaux, devrait être strictement interprété, et que le pouvoir pour approuver le contrat en question ne se trouvait pas compris dans les termes de l'article."

L'article 35 se lit en partie comme suit:—

"...doit entendre tout ce qui concerne la prétendue violation ou infraction, et rendre l'ordonnance qui lui paraît raisonnable et opportune; et dans ladite ordonnance elle peut, à sa discrétion, ordonner à la compagnie ou à cette corporation ou personne, de faire les choses nécessaires à l'exécution convenable de ce contrat ou de s'abstenir de faire les choses qui en constituent une violation ou une infraction."

Il n'y a rien d'équivoque; le seul pouvoir est de faire observer les contrats quand il est jugé à propos.

La Commission a toujours prétendu que ses jugements ne sanctionnaient la violation d'aucun contrat, elle a affirmé le contraire.

Je réfère à la cause du C.N.R. vs. Goldstone (Jugements, ordonnances, règles et règlements de la Commission, Vol. 18, p. 29) dans laquelle la requête fut accordée pour la raison que le remplacement de l'agent de station par un gardien ne fut pas considéré comme étant une violation du contrat impliqué, lequel était à l'effet d'ériger et d'entretenir une station permanente pour les

besoins du trafic des marchandises et du public voyageur. Dans cette cause, on réfère à la cause de Wallace vs. Great Western Railway, Vol. 25 des Rapports de Chancellerie de Grant, et monsieur le commissaire McLean établit une distinction entre cette dernière cause et celle de la compagnie London et Lake Erie Transportation vs. Certaines Municipalités de Canton, dans laquelle monsieur le commissaire Mills et le Commissaire en chef Drayton renvoyèrent la requête de la compagnie du chemin de fer qui demandait d'être libérée de ses obligations contractuelles. Il ne différa pas d'opinion avec les Commissaires ci-dessus nommés quant à la décision de ces derniers; sa distinction, au contraire, semble s'accorder avec le principe soutenu dans cette décision. Il disait:—

> "Le gardien que la compagnie désire nommer aux termes de sa requête accomplira plus de travail qu'il s'en faisait à la station d'Avening dans la cause de Nottawasaga. Dans cette cause, Hagerty, C.J., p. 66, a reconnu 'que pour ce qui est de la station, celle-ci est encore maintenue quoique dans une condition de moindre efficacité.' Les termes en question s'appliquent très bien ici. Il peut être reconnu qu'au point de vue du public les services d'un gardien ne sont pas aussi efficaces que ceux d'un agent régulier, mais quels que soient les services moins efficaces qui puissent être rendus, cela ne veut pas dire qu'il n'existe pas à cet endroit de station en service.
>
> "La nomination d'un gardien dans le présent cas me semble être justifiée quant aux faits, et je ne crois pas que l'attitude projetée soit une violation du contrat en question."

Il y a aussi l'axiome légal "inclusio unius" (pouvoir discrétionnaire de faire observer, de protéger) "Fit exclusio alterius" (pouvoir de violer par une ordonnance.)

L'intérêt public ne pouvait pas prévaloir avant l'adoption de cet article 165-(a); le contrat ou la loi spéciale constituait la seule protection avec l'article 35.

Le Parlement en adoptant l'article 165-(*a*) et en laissant tel qu'il était l'article 35, a laissé entendre que les tribunaux seraient saisis de la question des obligations spéciales lorsqu'il s'agirait de l'abandon de lignes, avant que les compagnies de chemins de fer puissent demander à la Commission l'autorisation de discontinuer l'exploitation de toute ligne pour des motifs d'inconvénients plus grands pour eux ou pour le public.

On a même autrefois considéré que des obligations implicites et morales liaient les chemins de fer et constituaient un obstacle à l'abandon de lignes—Voir la requête Subdivision de McAuley du C.P.R. (jugements de la Commission, etc., vol. 23, p. 303).

> "A l'enquête, un témoin, M. Alex. MacDonald, produisit une mappe (Exhibit N° 8) montrant la région tributaire de Manson. La compagnie du chemin de fer fut requise de produire, et elle produisit un état détaillé des terrains qu'elle avait vendus dans ce voisinage. J'ai fait vérifier cet état avec la mappe "Exhibit N° 8" et j'ai constaté que dans les limites de cette région la compagnie du Pacifique-Canadien avait vendu 17,280 acres de terre, et en plus, la superficie que comprend la ville de Manson.
>
> "On peut fortement argumenter que ces terrains furent acquis avec des représentations implicites de la part de la compagnie que la ligne en question continuerait d'être exploitée, et qu'il serait tout à fait injuste pour les acquéreurs de ces terrains de permettre à la compagnie d'abandonner cette ligne à l'heure actuelle.
>
> "Lorsque la ligne s'étendant de McAuley à Virden fut parachevée en 1913, le secrétaire-trésorier de Manson écrivit à la Commission pour savoir s'il était vrai, selon une rumeur, que la compagnie du Pacifique-

Canadien avait l'intention de discontinuer l'exploitation de sa ligne, de Kirkella à McAuley. La Commission fit part de cette lettre à la compagnie du chemin de fer qui répondit que "bien qu'elle aimerait certainement abandonner l'exploitation de cette ligne qui s'étend de Kirkella à McAuley, aucune mesure ne sera prise en ce sens avant d'en arriver à des arrangements satisfaisants avec les gens de Manson." Si ces conditions étaient raisonnables en 1913, elles le sont certainement plus encore aujourd'hui."

Les extraits suivants tirés du contrat de 1911 expliquent plus au long la nature des obligations et leur caractère de liens en vertu de l'article 153:

"Entre Sa Majesté le Roi, représenté par le ministre des chemins de fer et canaux (auquel il est référé ici comme "le ministre") agissant en vertu d'un arrêté-en-conseil daté du 21 octobre 1911, d'une part; et la compagnie de chemin de fer Orford Mountain, ci-après dénommée "la compagnie", d'autre part.

"Attendu que la compagnie a été autorisée à construire le chemin de fer ci-après mentionné par la Loi ou les Lois suivantes, à savoir: Statuts de Québec de 1888, chap. 98; de 1889, ch. 4; de 1895, ch. 2; de 1899, ch. 4; de 1902, ch. 2; Statuts du Canada, de 1901, ch. 79; de 1902, ch. 87, et de 1911, ch. 124.

"Et attendu que par une loi du Parlement du Canada—6-7 Edouard VII, ch. 40, intitulé "Une loi autorisant l'octroi de subsides pour aider à la construction de lignes de chemin de fer y mentionnées et ci-après référée comme "Loi des Subsides" il était décrété à l'article 1 ce qui suit:

"1. Le Gouverneur en son conseil pourra accorder un subside de $3,200 par mille pour la construction de chacune des lignes de chemin de fer ci-après mentionnées (n'excédant pas dans chaque cas le nombre de milles ci-après établi respectivement) dont le coût ne devra pas dépasser en moyenne la somme de $15,000 par mille pour la distance milliaire subventionnée; et pour la construction de chacune desdites lignes de chemin de fer n'excédant pas la distance milliaire ci-après établie et déterminée dont le coût dépassera en moyenne la somme de $15,000 par mille, pour la distance milliaire subventionnée, un nouvel octroi en sus de $3,200 par mille, de cinquante pour cent du montant excédant le coût moyen de $15,000 par mille, tel octroi ne devant pas dépasser en totalité la somme de $6,400 par mille."

Et attendu qu'en vertu du paragraphe 15 dudit article 1 de la Loi des Subsides, une ligne de chemin de fer a été mentionnée et désignée dans les termes suivants, pour la construction de laquelle un tel subside ou de tels subsides pourraient être octroyés, à savoir:

"15.—A la compagnie de chemin de fer Orford Mountain dans le but de construire les lignes de chemin de fer suivantes, à savoir:.... ..... s'étendant de Mansonville à la Frontière Internationale, soit un parcours de 3.12 milles.....en remplacement des octrois qui furent accordés en vertu du chapitre 57 du Statut de 1903, article 2, item 50, mais n'excédant en totalité 27 milles."

"Il est par conséquent convenu et agréé par et entre Sa Majesté, représenté comme ci-dessus, pour lui-même et ses successeurs, et la compagnie pour elle-même, ses successeurs et ayants droit, comme suit, savoir:

"1. Que la compagnie devra bien, dûment et fidèlement faire, bâtir, construire et compléter la ligne de chemin de fer mentionnée et décrite au paragraphe 15 de l'article 1 de la Loi des Subsides, tel

que ci-dessus énoncé et stipulé, de même que tous les ponts, ponceaux, ouvrages et constructions s'y rapportant, en conformité, sous tous les rapports, des devis y annexés marqués "A", ou conformément aux modifications y relatives qui pourront de temps à autre, au cours du progrès des travaux, être approuvées par le Gouverneur en son conseil.

. . . . .

"8. Que la compagnie devra sous tous les rapports s'en tenir et s'en rapporter, et ladite ligne de chemin de fer y sera sujette, à toutes les dispositions de la Loi des Subsides, et à toutes autres lois du Parlement qui pourront s'y appliquer et ce en tout et aussi largement et jusqu'au même point que si ces dispositions étaient énoncées au long aux présentes.

"9. Que sur l'accomplissement et l'exécution par la compagnie des clauses ci-dessus de ce contrat, et ce à la satisfaction du Gouverneur en son conseil. Sa Majesté, conformément et subordonnément aux dispositions des articles un, deux et quatre de la loi des Subsides, payera à ladite compagnie telle somme à même l'octroi ou les octrois ci-dessus établis ou mentionnés que le Gouverneur en son conseil, eu égard au coût des travaux exécutés, considérera comme étant due par suite de ladite loi.

. . . . .

"12. Que lorsque les travaux que l'on projette d'accomplir auront été terminés en vertu du présent contrat, ladite ligne de chemin de fer, meubles et immeubles et accessoires ainsi que les franchises, droits et privilèges s'y rapportant, feront partie d'icelle et deviendront la propriété de la compagnie du chemin de fer, subordonnément toutefois aux stipulations contenues dans le présent contrat devant être ensuite observées et mises à exécution".

Dans mes remarques précédentes, j'ai traité de la portée de la décision de la Commission relativement à un contrat dûment passé et non d'un caractère privé mais concernant le public et les chemins de fer en tant que voituriers publics.

Dans ce cas-ci nous ne sommes pas seulement en face d'un contrat passé entre le gouvernement du Canada et un voiturier public—le chemin de fer—mais en face des dispositions d'une loi spéciale,—la Loi des Subsides—et toutes les clauses du présent contrat doivent être considérées de la même valeur que si elles étaient insérées au long dans ladite loi.

L'Arrêté-en-Conseil y annexé dûment autorisé par ladite loi ainsi que les formules et cédules qui l'accompagnent, corrobore cette proposition.

C'est cela, à mon avis, qui constitue la loi spéciale mentionnée à l'article 3 de la Loi des chemins de fer, lequel se lit comme suit:—

"3. Sauf dispositions contraires de la présente loi,

"(*a*) la présente loi doit s'interpréter comme ne faisant qu'une avec la loi spéciale, et

"(*b*) lorsque les dispositions de la présente loi et celles de quelque loi spéciale du Parlement du Canada se rapportent aux mêmes matières, les dispositions de la loi spéciale doivent être considérées comme prévalant sur les dispositions de la présente loi, dans la mesure nécessaire pour donner effet à cette loi spéciale".

J'irais plus loin et dirais même qu'il ne s'agit certainement pas d'un contrat d'un caractère privé comme dans le cas envisagé par l'honorable G. Blair dans son jugement cité plus haut—(4 C.R.C. 69). Lorsque la Commission a le pouvoir de faire observer un contrat, même d'une nature privée, je me demande

si elle ne doit pas le faire observer pour empêcher qu'une injustice soit commise.

Je soumets que ce contrat, même s'il ne constitue pas une loi spéciale, en est un tel qu'envisagé par l'article 153-(2) de la Loi des chemins de fer qui se lit comme suit:—

> "(2) S'il s'agit d'un traité de fusion, la compagnie née de la fusion, pour ce qui est de toutes les actions, opérations et choses ainsi faites, effectuées ou confirmées, et de tous ces droits, responsabilités, réclamations et prétentions, occupe à toutes fins la position des compagnies parties au traité de fusion, et les représente; et la généralité des dispositions du présent article n'est censée restreinte par aucune loi spéciale, à moins qu'elle ne mentionne expressément le présent article et n'en limite ou n'en restreigne expressément la portée".

Je réfère à l'arrêté-en-conseil du 13 juillet 1907 y annexé, ainsi qu'à la dernière partie du paragraphe 12 de ce contrat, subordonnément toutefois aux stipulations à être observées et exécutées dans la suite.

L'article 33 de la Loi des chemins de fer dit:—

> "(1) La Commission a pleine juridiction pour instruire, entendre et juger toute requête présentée par une partie intéressée ou en son nom;
>
> "(2) ...*et elle a, aux fins de la présente loi, pleine juridiction pour entendre et juger toute question tant de droit que de fait*".

L'article 34 dit:—

> "La Commission peut rendre des ordonnances ou établir des règlements:
>
> "(*a*) A l'égard de toute affaire, action ou chose que la présente loi ou la loi spéciale *autorise, prescrit ou défend;*
>
> "(*b*) En termes généraux, pour assurer l'exécution de la présente loi".

Je le répète, nous avons sinon une loi spéciale du moins un contrat sanctionné et reconnu comme liant les parties en vertu d'une disposition spéciale de la Loi des chemins de fer—article 153.

La Commission a pleine juridiction pour entendre et juger toute question, tant de droit que de fait, et rendre des ordonnances à l'égard de toute affaire, acte ou chose que la présente loi ou la loi spéciale autorise et prescrit. En plus, il incombe à la Commission de mettre en vigueur cette loi, et toute loi spéciale ou contrat d'une nature publique relevant des pouvoirs de la Commissions doit être, à mon avis, considérée comme faisant partie de cette loi.

> "Lorsque les termes d'une loi sont clairs et non ambigus, une Cour de justice ne peut aller au delà des termes précis".

Comme les termes de cet article ne sont pas ambigus, on ne saurait les interpréter en se référant à une législation antérieure sur le sujet—(30 C.R.C., p. 207, Ouellette vs C.P.R., Jugement de la Cour Suprême). L'article 153 n'est pas ambigu.

.....

Lorsque la Commission a mis de côté ou annulé un contrat relatif à l'exploitation d'un chemin de fer, je soumets avec tout le respect pour les opinions contraires qu'il ne reste plus de remède efficace devant les tribunaux civils.

Le droit de faire observer l'exécution spécifique d'un contrat dûment passé est l'une des prérogatives d'une partie contractante, et le fait que la décision de la Commission est définitive pour ce qui est de la discontinuation d'exploitation d'un chemin de fer, les tribunaux ne peuvent pas apporter de remède pour l'exécution du contrat. Même les droits à des réclamations en dommage seraient compromis.

C'est un principe de droit reconnu et explicitement contenu à l'article 1065 du Code Civil que "le créancier peut, dans les cas qui le permettent, demander aussi l'exécution de l'obligation même".

Avant que la Loi des chemins de fer ne fût adoptée, les tribunaux avaient le droit d'émettre des brefs de prérogative pour faire exécuter de telles obligations par les chemins de fer, mais maintenant ces pouvoirs appartiennent à la Commission et non aux tribunaux civils.

J'ajouterai qu'aucune cour civile ne pourrait prendre en considération la requête d'un chemin de fer pour la résiliation de ses obligations contractuelles sanctionnées par la loi parce que des pertes résultent du contrat.

La Commission n'a pas plus le pouvoir de résilier un contrat qui fait partie d'une loi spéciale ou d'une partie d'une loi spéciale ou dûment adopté en vertu de l'autorité d'une loi spéciale qu'aucun tribunal, à moins qu'il n'y ait une loi spéciale à cet effet. Elle peut dans les cas prévus par l'article 35 s'abstenir de faire observer le contrat. Le respect des contrats est un principe reconnu, sauf quand le législateur lui-même en vue du bien-être public a donné des pouvoirs discrétionnaires aux tribunaux comme dans le cas de la Loi de Faillite, etc.

On a soutenu que les prétentions ci-dessus seraient justes s'il n'y avait pas l'article 165 (*a*) qui se lit comme suit:—

> "Une compagnie peut abandonner l'exploitation de toute ligne de chemin de fer avec l'approbation de la Commission, et nulle compagnie ne doit abandonner l'exploitation de quelque ligne de chemin de fer sans cette approbation."

Je soumets que cet article apporte seulement remède en tant qu'il restreint les droits du chemin de fer de discontinuer l'exploitation alors qu'il n'était pas auparavant tenu d'obtenir l'autorisation de la Commission pour effectuer telle discontinuation. Si nous lisons l'article nous constatons qu'il ne réagit pas ou ne porte atteinte à aucune des dispositions actuelles de la Loi, et qu'il n'empiète pas sur des droits acquis.

L'article 15 de la Loi d'Interprétation, ch. 1 des Statuts Revisés du Canada de 1927, dit:—

> "15. Toute loi, de même que chacune de ses prescriptions et dispositions, est censée réparatrice, soit qu'elle ait pour but immédiat d'ordonner l'accomplissement de certaine chose que le Parlement considère d'intérêt public, ou d'empêcher ou de châtier l'accomplissement d'une chose qu'il juge contraire à cet intérêt. Par conséquent, l'interprétation à lui donner doit être franche, large et libérale, et la plus propre à assurer la réalisation de l'objet de la loi et de ses dispositions et prescriptions, selon leur sens, intention et esprit véritables."

Cet article donne à la Commission le pouvoir discrétionnaire d'empêcher les chemins de fer de discontinuer l'exploitation de leurs lignes, pouvoir qu'elle n'avait pas lors de l'absence de dispositions statutaires ou contractuelles, et c'est tout.

Ces prétentions ne viennent pas en conflit avec aucune des décisions de la Cour Suprême dans les causes suivantes:—

> Montréal Park & Island Co. vs. Cité de Montréal, 11 C.R.C., 254;
> Grand Trunk Pacific Railway Co. vs. Cité d'Edmonton, 15 C.R.C., 445.

Examinons d'abord la cause rapportée au volume 11, p. 254: "Elle a maintenu que la Commission aurait dû admettre la preuve faite par rapport au contrat en considération duquel des tarifs spéciaux de transport ont été accordés."

Les juges dissidents auraient renvoyé l'appel pour la raison que le contrat empiétait sur les pouvoirs de la Commission, articles 314, 316, 317 et 319 de la Loi des chemins de fer.

C'est un axiome légal que nulle convention ne saurait être dérogatoire aux dispositions de la loi; d'ailleurs, il existe une disposition spéciale—paragraphe 7 de l'article 316—"Toute convention contraire au présent article, faite entre deux ou plusieurs compagnies, est illégale, nulle et de nul effet".

La seule déduction qui peut être faite c'est qu'un contrat qui enfreint les pouvoirs de la Commission ne lie pas celle-ci bien qu'il puisse être considéré comme un élément de preuve et une orientation pour en arriver à une conclusion.

Quant à l'autre cause: G.T.P.R. Co vs. Cité d'Edmonton, 15 C.R.C., p. 445, la Cour Suprême avait à décider, premièrement, si la Commission se trouvait liée par un contrat passé entre la Cité d'Edmonton et le G.T.P. Ry., et deuxièmement, si en l'étant, les dispositions de la clause 7 du contrat voulaient dire que la compagnie du chemin de fer ne devrait pas payer les dépenses mises à sa charge par l'ordonnance de la Commission.

La réponse fut dans la négative; et même, il fut décidé que l'ordonnance ne violait pas le contrat. De plus, ce contrat empiétait sur les pouvoirs de la Commission et était d'un caractère privé comme celui auquel réfère le Commissaire en chef Blair, 4 C.R.C., p. 69, ainsi qu'il suit:—

> "La Commission, comme nous l'avons déjà dit, n'est pas une Cour pour régler les différends qui peuvent survenir et résulter de contrats passés entre parties et portant sur des questions qui leur sont tout à fait personnelles ou du moins qui sont d'une nature plutôt privée que publique; et nous devons encore ici faire valoir fortement l'opinion qu'il n'est pas dans les attributions de la Commission, dans l'administration de la Loi des chemins de fer qui la constitue elle-même, de chercher à trouver des remèdes ou à procurer des mesures réparatrices dans des cas où ces dites mesures réparatrices et ces remèdes pourraient être fournis d'une manière plus efficace par les tribunaux civils ordinaires du pays."

Ce fut ma manière de voir dans le jugement que j'ai rendu dans la cause du Pont Interprovincial attendu que les cours de justice pouvaient faire observer le contrat; mais dans ce cas-ci, les cours ne peuvent pas le faire.

Le 8 novembre 1935, monsieur le Commissaire Stone rendit un jugement dans la cause contenue dans le dossier n° 39309.3—(Requête de la compagnie du C.P.R. demandant d'être autorisée à discontinuer l'exploitation d'une partie de la subdivision de sa ligne de la Côte, dans le Nouveau-Brunswick), et auquel se sont ralliés le Commissaire en chef adjoint et le Commissaire Norris, accordant la requête.

Les prétentions que j'ai déjà fait valoir ne viennent pas en conflit avec le jugement en cette cause, et je conviens que "la question de savoir si l'on doit accorder la requête d'abandon d'exploitation en est une qui doit être jugée suivant les circonstances dans chaque cas."

Dans cette cause, des obligations spéciales au sujet de l'exploitation avaient été imposées au chemin de fer par une loi provinciale, mais la compagnie de chemin de fer Shore Line qui était devenue propriétaire de cette ligne et sujette aux obligations qui avaient été imposées lorsque la dite ligne avait été construite par une compagnie antérieure, devint en faillite, et son actif fut vendu par le greffier en chancellerie et mis en possession de la compagnie New Brunswick Southern Railway qui fut incorporée en 1901.

Cette compagnie loua cette ligne au C.P.R. en 1910.

Les anciennes obligations contractuelles ne furent pas imposées par la Loi d'incorporation de 1901, ou dans le bail en faveur du C.P.R. et ne furent pas, non plus, mentionnées.

La requérante par son procureur a dit avec raison:—

"On ne saurait sérieusement soutenir qu'un tel droit (hypothèque et l'obligation envers le gouvernement du Nouveau-Brunswick) existe après qu'une sanction formelle a été donnée par la Législature à la vente des chemins de fer avec tous les droits, pouvoirs, privilèges et exemptions de la compagnie, et sans aucune mention des anciennes responsabilités de la compagnie elle-même ou de son prédécesseur en titre."

Dans la présente cause, comme il n'y a pas de doute sur l'existence actuelle des obligations contractuelles et légales, la Commission, à l'exclusion des cours civiles, est le tribunal désigné pour juger de ces obligations.

L'abandon de lignes de chemin de fer, même lorsqu'il n'est pas interdit par quelque moyen légal, doit être considéré avec défaveur. Il implique la destruction d'actifs dispendieux, de graves inconvénients pour les localités, la perte d'emplois pour plusieurs, la démoralisation pour ceux qui en sont affectés de même que d'autres réactions possibles contre le bien-être public.

Les chemins de fer peuvent montrer leurs déficits actuels d'exploitation, mais il est impossible pour le public d'exposer devant un tribunal toutes les conséquences pouvant résulter d'un tel abandon—les pertes et désavantages qu'il devra supporter, la dépréciation des propriétés, la désertion de la population vers des centres plus favorisés. Qui peut déterminer le facteur précis, moral ou matériel qui donne à un homme la volonté de poursuivre ses activités? Et quel est le problème national? Celui de résoudre la question du chômage, de maintenir l'individu à son emploi, de procurer du travail à la jeunesse errante et à tous ceux qui sont en état de travailler, de faire renaître la foi et l'espérance dans l'avenir. L'abandon de lignes de chemin de fer est la négation des moyens de parvenir à cette fin.

La compagnie du chemin de fer en raison des pertes qu'elle dit avoir subies, lesquelles en 1934 s'établissaient à environ $6,000, a demandé à la Commission,—un tribunal constitué par le Parlement pour assurer au public un service de trains convenable—la permission de résilier son engagement contractuel de fournir un service permanent, et c'est cette même compagnie de chemin de fer qui, en 1913, a convenu: "Qu'aucune mesure ne sera prise en vue d'abandonner l'exploitation de cette ligne jusqu'à ce que des arrangements satisfaisants aient été conclus avec les gens de Manson". Qu'est-il arrivé depuis pour interpréter autrement ses devoirs envers le public?

Qu'est-il arrivé depuis 1934 alors que la Commission au complet déclara que "si ces conditions étaient raisonnables en 1913, elles le sont certainement encore plus aujourd'hui"?

Un contrôle efficace des voituriers qui font usage des routes et, des conditions économiques améliorées peuvent changer les pertes actuelles du chemin de fer en des profits; mais que penser de la position où se trouve le cultivateur incapable de supporter les plus grands inconvénients qui résulteraient de l'abandon du chemin de fer? Que penser quant à celui qui perdrait son emploi?

Quelle portion de la somme de $6,000 va être économisée aux dépens du travail? Si nous prenons en considération l'expérience faite par le C.N.R. durant 1933—(voir rapport 1933, p. 5), nous pouvons présumer que la main-o'œuvre va contribuer pour plus de 80% de la somme épargnée.

Dans le cas présent, il y a une très sérieuse considération. Le peuple doit continuer de croire "qu'il y a des juges à Berlin" pour protéger ses droits acquis. Cette foi constitue un des éléments les plus importants du patrimoine national.

Le remède aux difficultés des chemins de fer est entre les mains de ceux-ci et des pouvoirs du Parlement, tel que rapporté par la Commission du Commrce Inter-Etats au vol. ex parte 115, p. 70: (mutatis mutandis).

> "The answer to the problem before us will be found (1) in the return of a normal condition of business activity and movement, to be achieved only through continued and patient co-operation of carriers and shippers, with the thought of present profit submerged for the moment, even to the point of *personal sacrifice* in the interest of the speedier resumption of better conditions for all; and (2) by such prompt action on the part of Congress as will insure that competition between the various forms of transport agencies will be on equal and fair terms, with the welfare of a national transport machine as the objective".

AUTORITÉS

21 Canadian Railway Cases, p. 211;

Cité de Hamilton vs Grand Trunk Railway Co.

"On doit indiquer d'une manière spécifique qu'il y a eu violation d'un contrat pour donner juridiction à la Commission en vertu des Statuts 8 & 9 Edouard VII, ch. 32, article 1."

25 Grant's Chancery Reports, p. 62;

Goyeau vs Great Western Ry. Co.—Contrats.

16 Ontario Appeal Reports (Rapports de la Cour d'Appel d'Ontario, p. 52;

Corporation de la Ville de Nottawasaga vs Hamilton & Western Railway Co.—Contrats.

Je renverrais la requête.

Le 3 décembre 1935.

ORDER No. 52622

In the matter of the application of the Canadian Pacific Railway Company, as lessee exercising the franchises of the Orford Mountain Railway Company, hereinafter called the "Applicant Company," under Section 165A of the Railway Act, for authority to abandon operation of that portion of the Orford Mountain Railway (known as the Orford Subdivision of the Applicant Company) between mile ·9 (International Boundary between the State of Vermont and the Province of Quebec) and mile 22·8 (Eastman), a distance of 21·9 miles.

File No. 39309.

TUESDAY, the 31st day of December, A.D. 1935.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Mansonville, Quebec, June 26, 1935, in the presence of counsel for the applicant company and municipalities interested, and what was alleged,—

It is ordered: That the abandonment of operation of that portion of the Orford Mountain Railway (known as the Orford Subdivision of the applicant

company) between mile 0·95 and mile 16·0, be, and it is hereby, approved; such abandonment to become effective within ninety days from the date of this order; and that the approval herein granted be without prejudice to whatever rights or remedies may be open to the parties in courts of competent jurisdiction.

2. That the remainder of the line between mile 16·0 and mile 22·8 (Eastman) be maintained in serviceable condition to take care of car loadings as and when required.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52650

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

WEDNESDAY, the 8th day of January, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 738, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 738, approved herein, is 2½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52651

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

WEDNESDAY, the 8th day of January, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 739, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 739, approved herein, is 4½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52668

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

MONDAY, the 13th day of January, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in item 245, 2nd revised page 23 of Tariff C.R.C. No. E-4757, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said 2nd revised page 23 of Tariff C.R.C. No. E-4757, approved herein, are as follows:—

	Cents per 100 pounds
Group 1	9
Group 2	8

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52669

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

MONDAY, the 13th day of January, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published to Crabtree, Que., in second revised page 55 to Tariff C.R.C. No. E-4757, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said second revised page 55 to Tariff C.R.C. No. E-4757, approved herein, is 28½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52670

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.15

MONDAY, the 13th day of January, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published to Beauharnois, Valleyfield, and Eustis, Quebec, published in Supplement No. 3 to Tariff C.R.C. No. 194, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 3 to Tariff C.R.C. No. 194, approved herein, are as follows:—

To	Per ton of 2,000 pounds
Beauharnois, P. Q. / Valleyfield, P.Q.	$3.20
Eustis, P.Q.	2.90

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52674

In the matter of rates on crude petroleum oil, carloads, from southwestern United States points to points in Manitoba, Saskatchewan, and Alberta.

File No. 38555

THURSDAY, the 16th day of January, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Whereas the Board has not declared, or deemed, the Canadian destination points published in item 800 of Southwestern Lines Tariff No. 125-I, C.R.C. No. 420, issued by J. R. Peel, agent, to be competitive points, thus removing them from the provisions of item 230 of the said tariff,—

The Board therefore orders: That Note "B," reading, "Rates shown are published to meet competition and will not apply to intermediate stations in Canada," published in item 800-A, Supplement No. 2 to Southwestern Lines Tariff No. 125-I, C.R.C. No. 420, issued by J. R. Peel, agent, and re-issued in Supplement No. 4 to the said tariff, be, and it is hereby, disallowed as from January 15, 1936.

H. GUTHRIE,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR NOVEMBER, 1935

Railway accidents..	189, with	8 persons killed and	183 injured.
Railway accidents at highway crossings.	34, with	14 persons killed and	48 injured.
	223	22	231

	Killed	Injured
Passengers..	1	19
Employees..	2	148
Others..	19	64
	22	231

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents

Quebec

3 Automobile—Driver failed to stop for crossing; Que. licences, 110588; 95480; FP-6129.

5 Auto Truck—Driver failed to stop for crossing; Que. licences, FM-2057; F-15564; F-13669; F-36; FM-4583.

1 Pedestrian—Failed to hear whistle and bell.

Ontario

3 Automobile—Ran into side of train. Ont. licences, P-2255, E. Cox, 344 Wilson St., Hamilton; H-2748 (name and address not given), H-42, G. F. McManus, South Dale St., St. Thomas.

4 Automobile—Driver failed to see or hear train. Ont. licences, MY-246 (name and address not given); Ont. LN-257, Frank Cronin, Fesserton; Ont. KH-112, A. Kozluk, Pawetec; MP-98, Mrs. Trippe, Trenton.

1 Automobile—Driver failed to heed bell and wig-wag; licence, Ont. FK-531 (name and address not given).

1 Automobile—Driver failed to observe train. Licence, Ont. HV-821, Rev. J. W. Edwards, Carleton Place.

1 Automobile—Auto passed over track, stopped, slid back onto track. Licence, Ont. LB-337, M. Furlong, Creighton.

1 Automobile—Defective brakes on auto. Licence, Ont. KZ-964, M. Kuchara, Garson.

2 Automobile—Driver attempted to beat train. Ont. licence, S-9150, J. Mehart, 225 Colborne St., London; Ont. licence, X-7530, E. Perry, Cardinal.

1 Automobile—Ont. licence HB-243, F. Mouder (address not given).

1 Auto Truck—Ran into side of train. Ont. 17564-C, J. Ungerman (address not given).

1 Auto Truck—Driver failed to look for train. Licence Ont. 31557, R. M. Wallace, Bellamy.

Saskatchewan

1 Automobile—Driver attempted to cross ahead of moving train. Sask. licence 9-745.

2 Horse Drawn Vehicle—

1 Pedestrian—Failed to exercise precaution before crossing track.

Alberta

1 Automobile—Auto skidded onto track in front of train. Licence, Alta. D-220.

British Columbia

1 Automobile—Ran into side of train. Licence B.C. 36-250.

1 Automobile—Driver failed to exercise precaution. B.C. 68-982.

1 Auto Truck—Driver failed to see or hear train. Licence B.C. 63-348.

1 Auto Truck—Licence B.C. 80-715.

Of the 34 accidents at highway crossings, 3 occurred at Protected crossings, and 31 at Unprotected crossings. Twenty of the accidents occurred during the daylight hours and 14 at night.

Ottawa, January 15, 1936.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXV | Ottawa, February 15, 1936 | No. 24

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Application of the Canadian National Railways for an Order granting leave to abandon the operation of that portion of its Port Perry Subdivision, in the Province of Ontario, between Whitby Town (Mile 2·8) and Cresswell (Mile 32·8)—a total distance of 30·0 miles.

File 39310.3

JUDGMENT

COMMISSIONER STONE:

Built under the charter of the Port Whitby and Port Perry Railway Company which later became the Whitby and Port Perry Extension Railway Company, this line was opened for operation in 1877 and in the same year became known as "The Whitby, Port Perry and Lindsay Railway Company." It provided connection between Lake Ontario and Lake Scugog at Port Perry and from there "to the navigable water in the town of Lindsay and thence to Fenelon Falls." In 1882 in consolidation with other lines it became "The Midland Railway Company." In 1884 the Midland Railway Company was leased to the Grand Trunk Railway, and in 1893 amalgamated with the Grand Trunk Railway finally becoming part of the Canadian National Railways in 1923.

No ballast has been placed on the roadbed since 1915; it is very light and generally worn out. Ties are untreated and old. There are seven steel bridges in fair condition and six timber bridges in poor condition. Culverts are in poor condition. The rails are poor and in places badly bent. Sixteen miles were laid with 56-pound rail in 1886, and eight miles with 65-pound rail in the same year. The balance of six miles is laid with 80-pound rail. Train movements are restricted to ten miles per hour, more particularly between Port Perry and Cresswell.

Application was made by the Canadian National Railways under section 165A, section 2, subsection 3, of the Canadian National-Canadian Pacific Act of 1933, and all other appropriate statutory provisions, for an order granting it leave to abandon the operation of its line between Whitby Town and Cresswell, a total distance of 30 miles.

On receipt of this application arrangements were made for investigation by the Board's officers. On March 20, 1935, a general inspection of the line was made by officers of the Engineering and Operating Departments of the

Board, and representatives were heard from Port Perry, Reach township, village of Brooklin, Scugog township, merchants and shippers. The case was heard by the Board at Port Perry on Wednesday, May 29, 1935.

Prior to March 9, 1931, the service consisted of a daily except Sunday passenger train, and a daily except Sunday mixed train connecting at Whitby Junction with main line trains east and west. Service was reduced on March 9, 1930, to a daily except Sunday mixed service; and on September 27, 1931, the service was further reduced to a tri-weekly mixed train service. In addition there was a tri-weekly mixed train service furnished between Whitby Junction and Brinlook crossing by the train operating over the Orono Subdivision. This service was further reduced to a bi-weekly mixed train service; also a bi-weekly service between Whitby Junction and Brinlook crossing.

In describing the territory involved the applicant states:—

> "The line passes through a prosperous mixed farming country. The villages served are farming communities and are of minor importance with the exception of Port Perry, which is the business and commercial centre of a large farming community. There are no industries of consequence being developed along this line. A good concrete highway (No. 7) parallels the line and is kept open all year. There is bus and truck competition serving most of this territory."

In support of the application the following summarized statements were submitted:—

Revenues accruing to:	Branch	Balance of System	Total
Oct., 1930-Sept., 1931	$12,989 00	$36,481 00	$49,470 00
1933	4,005 00	21,472 00	25,477 00
1934	.....	.....	34,644 00
Expenses incurred on:			
Oct., 1930-Sept., 1931	$62,636 00	$17,418 00	$80,054 00
1933	32,267 00	10,375 00	42,642 00
1934	.....	.....	42,980 00
System loss from operation:			
Oct., 1930-Sept., 1931	.....	.....	$30,584 00
1933	.....	.....	17,164 00
1934	.....	.....	8,336 00
Car movements on line:	Inward	Outward	Total
Oct., 1930-Sept., 1931	328	152	480
1933	241	68	309
1934	287	112	399

Referring to the various items included in receipts shown for 1930-31, counsel for the applicant explained that distribution of earnings as between the branch line and the balance of the system was divided on a mileage basis, and that the cash collections are insignificant, as a check of representative months would not warrant adding more than $50 to the amount already shown.

Maintenance of way and structure expenses during the same period was compiled on a yearly average covering the period 1928 to 1933 inclusive, and included $2,040 for divisional superintendence, which may not become material or represent an actual saving. The balance of expense included operating and station costs carrying traffic over other lines of the system, and an annual outlay of $2,550 for provincial taxes.

Cost for placing the line in condition under which reasonable operation might be carried on was estimated by the railway company at $10,000.

Counsel for the applicant further stated that Cresswell was approximately three-quarters of a mile south of Manilla Junction, but the community would still be served by the railway. Sonya was of minor importance, but there was a substantial shipment of turnips from Seagrave. The country on the

westerly side between Seagrave and Port Perry is a bit rocky and swampy, and it was suggested shipments from the vicinity of Seagrave could be taken care of from Blackwater Junction. Port Perry is the important point on the line, as during the period from October, 1930, to September, 1931, 193 carloads were shipped in and 32 carloads out, consisting principally of coal, lumber, slabs, grain and flour. In the same year the freight earnings were $17,929, and total traffic $24,390. In 1934 freight earnings $18,926, total traffic $21,027. The inward carload movements were considerably in excess of the outward movements at both Port Perry and Brooklin. Port Perry is on Highway No. 12 connecting with Highway No. 7, and the Canadian Pacific Railway crossed this line at Myrtle, approximately seven miles from Port Perry and the railway had recently inaugurated the pick-up and delivery service operating from Oshawa, which will serve all these points as far north as Port Perry; that this service would shortly be in effect and take care of outbound and inbound L.C.L. freight and what might formerly go by express.

Under examination by counsel a number of representative witnesses of various business interests located in Port Perry and adjacent farming activities opposed the application and gave evidence emphasizing the necessity for continued operation of the line as it meant the very life of the community and the business interests served.

It was stated that Port Perry had a resident population of 1,200 persons and was the only logical outlet for the inhabitants of the municipality of Scugog, an island eleven miles long and thirty-three miles in circumference, surrounded by Lake Scugog. This municipality was not served by the Burketon Junction-Lindsay line of the Canadian Pacific Railway. Decrease in rail traffic in recent years was due partly to the depression, but primarily to change in farming methods from seed grain to cattle raising, on account of penalties imposed by United States tariffs.

> "Q. What has become of the said business?—A. Well, of recent years two unfortunate tariffs were put on by the United States. When the first tariff was placed, $2.40 a bushel, we still did business, but when it was placed at $4.80 a bushel that was prohibitive. Tariff was placed probably five or eight years ago." *Evid., Vol. 623, p. 1718.*

Cattle raising had not been a profitable business for the farmer, and with a substantial reduction in tariff on seed grain this business would again revive and bring additional revenue to the railway. Various business interests during recent years had changed hands, and these business interests had facilities for storage of coal, grain and other commodities, which would be a direct loss. The firm of Hogg & Lytle Company contended their business would be cut in two by the closing of the line, two-fifths of which was done at Port Perry, and their elevator being worth $30,000 would be a direct loss if operation were abandoned. The lumber interests at Port Perry would be considerably handicapped as competition was keen, and the business would not absorb the additional costs for trucking from Myrtle, seven and a half miles distant, the nearest rail connection to Port Perry. Half of the Township of Cartwright was served through Port Perry, which is considered by those in the trade as probably one of the best trading country points in the province for inward and outward freight. The Kroehler furniture manufacturers who previously shipped by motor-truck had found this method of transportation unprofitable and scrapped their motor-trucks, and in future furniture would be transported by rail.

In a brief submitted by Mr. J. D. Lucas, K.C., representing various interests opposing the application, it is contended that the districts along the railway, such as the village of Port Perry, were built up after the railway was con-

structed and as a result of the presence of the railway; that the development of the area, the municipal indebtedness for schools, public improvements, etc., has resulted from the development brought about by the railway; that it is not in the public interest to deprive or to hinder farmers in the marketing of their products at a time when the tendency of legislation and public feeling is in favour of assisting and re-establishing farmers and producers; that with the improvement of conditions it is inopportune to request the abandonment of the line until further opportunity is given to test its usefulness to the citizens of these communities; that if the railway is abandoned it will take away the possibilities of the economic advancement of the communities served and farmers and others will be at the mercy of the ungoverned truckers; and that any saving to the Canadian National Railways from the operating loss currently present in the operation of the branch line is outweighed by the far greater loss which there would be to the municipalities served by the railway, etc.

The revenue received from passenger traffic does not warrant continued train operation. The abandonment of the line to movements of carload freight traffic, and its subsequent effect on the business and community interests, is the predominant factor involved, and applies more particularly to Port Perry and the municipality of Scugog than to other points.

Seagrave, 7·4 miles north of Port Perry, is the only station between Port Perry and Cresswell where cars are loaded. The loadings consist principally of turnips and grain hauled by the farmers, in some cases, twelve miles to the station. The only record shown for inbound movements was one car of cattle during the test period of 1930-31. It is alleged no serious inconvenience would be caused the farmer if the outward shipments were made from other adjacent stations, particularly those located west of Seagrave, as they could ship through Blackwater Station.

Approximately four-fifths of the carload freight movements are routed through Whitby to or from Port Perry and intermediate stations. The municipality of Scugog is served through Port Perry. The commodities hauled by the railway are heavy and bulky, for which proper facilities have been erected for storage at Port Perry. If transported by truck from Myrtle, a distance of seven and one-half miles, or other available stations it is alleged the additional cost for truck haul plus rail charges would seriously handicap, and in some cases prohibit, the continuation of business industries at Port Perry, thereby reacting to the detriment of community interests in general.

The Canadian Pacific line east of Lake Scugog, formerly known as its Burketon-Lindsay line, was abandoned for service as of December 12, 1932; and authority has been granted for the abandonment of the Canadian National line between Greenburn and Ronnac, known as the Orono Subdivision, from which line a former tri-weekly mixed service was furnished between Whitby Junction and Brinlook Crossing.

It was admitted by counsel for the applicant that it is questionable whether the charges for divisional superintendence would be actually saved by the abandonment of the line and might, therefore, reasonably be deducted from the various losses shown, as well as credit given for cash fares collected but not recorded in the statements.

If authority were granted for abandonment of that portion of the line between Port Perry and Cresswell a substantial saving would be made in costs for operation, maintenance, provincial taxes, prospective rehabilitation expense and would also reimburse the railway to some extent for material salvaged.

It will be noted from the statements filed that a considerable reduction was made in the losses shown in 1934 as compared with previous years. Much of this was due to economies put into effect by the railway company. It is alleged,

however, that it would cost $10,000 to rehabilitate this line for service, but this amount would be considerably reduced by the abandonment of that portion of the line between Cresswell and Port Perry.

Considering all that is involved in this case, I am of the opinion order should issue authorizing the railway company to abandon that portion of its line between Cresswell and Port Perry, to take effect thirty days subsequent to issuance of the order. The line between Port Perry and Whitby to be rehabilitated and operated to take care of traffic offering; the same to be without prejudice to any future application the railway company may desire to make after the expiration of two years, provided future operation demonstrates this segment of the line shows a continued loss in revenue.

OTTAWA, February 3, 1936.

The Assistant Chief Commissioner and Commissioner Norris concurred.

ORDER No. 52747

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 165A of the Railway Act, for approval of the abandonment of operation of that portion of their Port Perry Subdivision, in the Province of Ontario, between Whitby (Mile 2·8) and Cresswell (Mile 32·8), a total distance of 30 miles.

File No. 39310.3

THURSDAY, the 6th day of February, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Port Perry, Ontario, May 29, 1935, in the presence of counsel for the applicants and the municipalities interested, and what was alleged; and upon reading the further written submissions filed,—

It is ordered:

1. That the abandonment of operation of that portion of the applicants' Port Perry Subdivision between Cresswell and Port Perry be, and it is hereby, approved; such abandonment to become effective March 7, 1936.

2. That the portion of line between Port Perry and Whitby be rehabilitated and operated to take care of the traffic offering; the said requirement, however, to be without prejudice to the applicants renewing their application for abandonment at the expiration of two years, if in the meantime operation of the said portion of line shows a continued loss of revenue.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52685

In the matter of the application of the Canadian Passenger Association, hereinafter called the "Applicant," under Section 50 of the Railway Act, for permission to publish General Order No. 549, dated December 23, 1935, revising the regulations governing baggage car traffic in Canada, in the Canada Gazette.

File No. 23328

FRIDAY, the 17th day of January, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon the report of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant be, and it is hereby, granted leave to publish the said General Order No. 549, dated December 23, 1935, in the *Canada Gazette,* in accordance with the provisions of section 50 of the Railway Act.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52691

In the matter of the application on behalf of the Winnipeg River Railway Company, hereinafter called the "Applicant Company," under Section 323 of the Railway Act, for approval of by-law dated July 18, 1935, passed by the directors of the Company, authorizing the Freight Traffic Manager from time to time to prepare and issue tariffs of the tolls to be charged for the carriage of freight traffic upon the railway and all portions of the railway of the Applicant Company.

File No. 37514.8

FRIDAY, the 17th day of January, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the said by-law authorizing the Freight Traffic Manager of the applicant company from time to time to prepare and issue tariffs of the tolls to be charged for the carriage of freight traffic upon the railway and all portions of the railway of the applicant company, on file with the Board under file No. 37514.8, be, and it is hereby, approved.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52692

In the matter of the application of the Winnipeg River Railway Company, hereinafter called the "Applicant Company," under Section 330 of the Railway Act, for approval of its Standard Mileage Freight Tariff C.R.C. No. 1, on file with the Board under file No. 37514.8.

FRIDAY, the 17th day of January, A.D. 1936.

Hon. HUGH GUTHRIE. K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant company's Standard Mileage Freight Tariff C.R.C. No. 1, on file with the Board under file No. 37514.8, be, and it is hereby, approved; and that the said tariff, with a reference to this order, be published in at least two consecutive weekly issues of the *Canada Gazette.*

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52688

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 18th day of January, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 983, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 983, approved herein, is 24 cents per 100 pounds; 1½ cents per 100 pounds to be deducted account of water haul.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52712

In the matter of the application of the Canadian Pacific Railway Company and the Canadian National Railway Company, under Section 165A and Section 252 of the Railway Act, for (a) approval of the abandonment of operation of that portion of the Canadian Pacific Railway commencing at mileage 28·2 (Cyr Diamond) on its Edmundston Subdivision, thence northerly to mileage 56·4 (Edmundston Yard), a distance of 28·2 miles, all in the Province of New Brunswick; and (2) an Order permitting the Canadian Pacific Railway Company to connect its tracks with the tracks of the Canadian National Railway Company at the points shown on the plans dated Saint John, October 10, 1935, on file with the Board under file No. 39309·5.

WEDNESDAY, the 22nd day of January, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading what has been filed on behalf of the towns of Edmundston and Grand Falls, and the consent of the New Brunswick Railway Company and the county of Madawaska, filed,—

It is ordered:

1. That the abandonment of operation of that portion of the Canadian Pacific Railway Company's line of railway commencing at mileage 28·2 (Cyr Diamond), on its Edmundston Subdivision, thence northerly to mileage 56·4 (Edmundston Yard), a distance of 28·2 miles, all in the province of New Brunswick, be, and it is hereby, approved.

2. That the Canadian Pacific Railway Company be, and it is hereby, granted leave to connect its tracks with the tracks of the Canadian National Railway Company at the points shown on the said plans on file with the Board under file No. 39309.5.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52706

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 23rd day of January, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item 558A of Supplement No. 29 to Tariff C.R.C. No. E-4742, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 29 to Tariff C.R.C. No. E-4742, approved herein, is 5 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52719

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 29th day of January, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published from O'Brien's Siding, N.S., in item 226-B of Supplement No. 28 to Tariff C.R.C. No. 906, filed by the Dominion Atlantic Railway Company under section 9 of the Martime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 28 to Tariff C.R.C. No. 906, approved herein, is 7½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52720

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

WEDNESDAY, the 29th day of January, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders: That the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement 53 to Tariff C.R.C. No. E-1234.
Supplement 111 to Tariff C.R.C. No. E-1235.
Supplement 39 to Tariff C.R.C. No. E-1247.
Supplement 10 to Tariff C.R.C. No. E-1248.
Supplement 30 to Tariff C.R.C. No. E-1504.
Supplement 23 to Tariff C.R.C. No. E-1737.
Supplement 55 to Tariff C.R.C. No. E-1804.
Supplement 32 to Tariff C.R.C. No. E-1829.
Supplement 19 to Tariff C.R.C. No. E-1906.
Supplement 21 to Tariff C.R.C. No. E-2070.
Supplement 13 to Tariff C.R.C. No. E-2248.
Supplement 3 to Tariff C.R.C. No. E-2311.
Tariff C.R.C. No. E-2364.

H. GUTHRIE,
Chief Commissioner.

GENERAL ORDER No. 550

In the matter of issuance of free or reduced rate transportation by railway companies within the legislative authority of the Parliament of Canada.

File No. 496.27

MONDAY, the 3rd day of February, A.D. 1936.

Hon. H. GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

In pursuance of the powers conferred upon it by section 345 of the Railway Act and of all other powers possessed by the Board in that behalf,—
The Board doth order and direct:

(1) That the railway companies subject to the jurisdiction of the Board be, and they are hereby, permitted, until further order, direction, or permission of the Board, to issue free transportation only to the persons, and subject to the limitations and restrictions, if any, as set out below, namely:—

1. Destitute or homeless persons transported by charitable societies and the necessary agencies employed in such transportation.

2. Directors, officers, agents, and employees of the railway company issuing, or their families.

   Part-time medical officers may be furnished with annual passes confined as to use in the territory embraced within such officer's appointment and duties; also including where, in the opinion of the Chief Medical Officer, it is necessary, the nearest town or city outside of such officer's district where there is adequate hospital accommodation, and, in some cases, to cover the journeys that such officers may have to make to some adjacent division or headquarters point. (See Note.)

   In addition to the foregoing, these medical officers and wives and dependent members of their families may be granted the privilege of trip passes once a year to any point on the company's line, or, for special reasons, such additional number of passes not exceeding four, as the railways may consider justified by the circumstances.

   (NOTE.)—Where territorial application of medical officer's annual pass extends beyond the boundary of the district covered by his appointment, a brief explanation in each case for the extension to be reported to the Board for the purpose of record.

   Annual passes may be furnished watch inspectors only when required to travel officially on such duties and should be confined as to use in the territory embraced within such inspector's official duties (unless authority obtained from the Board for reasonable extension thereof to some point beyond an account train service, etc.).

   In addition to the foregoing, the railway may issue trip passes once a year to any point on the company's line to watch inspectors and their wives and dependent members of their families; no trip passes in excess thereof to be issued except as the Board may authorize on application of the railway.

Trip passes may be furnished bona fide and established tourist and travel agents and their full-time salaried employees travelling with the concurrence of the railway, to service and/or solicit traffic for the issuing railway.

3. Former employees of railway and transportation companies, as follows:—
   (*a*) Such retired, pensioned, furloughed, or superannuated officers and employees of railway and transportation companies as are carried on the company's official records of such retired, pensioned, furloughed, or superannuated officers and employees, and dependent members of their families;
   (*b*) Officers and employees who have become disabled and infirm in the service of the railway and transportation company, and dependent members of their families;
   (*c*) Dependent members of families of deceased officers or employees of railway and transportation companies;
   (*d*) Remains of deceased officers or employees of a railway or transportation company, or of dependent members of their families.
4. Officers (not including directors), agents, and employees of other railways or transportation companies, and their families.
5. Officers and employees of traffic associations and similar joint agencies maintained by, or on behalf of, carriers, and their families; retired officers and employees of such organizations and dependent members of their families; and dependent members of the families of deceased officers and employees of such organizations.
6. Between points within the province, to members of the provincial legislatures during term of office.
7. Dependent members of the families of members of the Senate; and dependent members of the families of members of the House of Commons, until ten days after date of dissolution of Parliament.
8. Officers and employees of the railway branch of the Department of Railways and Canals, and their families; to be restricted in the case of officers and employees not holding annual passes to one trip pass per calendar year when on annual vacation leave, except in special cases, such as death or serious illness in the immediate family, or when travelling on business of the railway branch of the department.
9. Governor-General, and staff, and families.
10. Members of the Interstate Commerce Commission of the United States, and the officers and staff of such commission.
11. Officers, agents, and employees of telegraph, telephone, and cable companies, and their families.
12. Members of the press.
   (*a*) Free transportation to be restricted to members of the Canadian Press, or press associations, and not to include press representatives of a foreign country entering or travelling in Canada, except when authorized by the Board. Representatives of a foreign newspaper resident in Canada will be governed by the regulation for the Canadian Press as set out in (*b*) hereof;
   (*b*) Free transportation for representatives of the Canadian Press, or press associations, other than a senior executive officer, to be confined to salaried members of the editorial staff of press associations, newspapers, and magazines of standing. For transportation

issued under this paragraph, receipt to be obtained by the railways from the person to whom issued, stating name, occupation, name of association or publication, territory over which pass is issued, and for what purpose it is required.

13. Deputy ministers of departments of the federal Government, and those having the rank of deputy ministers.

14. Private secretaries of ministers of the Dominion Government, of the Speakers of the Senate and House of Commons, and of the Leaders of the Government and official Opposition in the Senate and House of Commons.

15. Agents of the Immigration and Colonization Departments of provincial Governments actually accompanying parties of immigrants from the Atlantic seaboard to points within their respective provinces, or when travelling to the seaboard for this purpose.

16. Departments of Immigration and Customs of the United States, for such representatives of the departments as may be required by the Commissioner or Deputy Commissioner of Immigration, or Collector or Deputy Collector of Customs in charge of the district.

17. Immigration and Colonization Department of Canada—to immigration officers as may be required in connection with their official duties; also one immigration officer of each of the Provincial Governments, as directed by the minister.

18. Dominion and provincial agricultural demonstration cars and necessary attendants.

19. One chief inspector, and six inspectors of live stock cars and yards of the Department of Agriculture of the Dominion Government; the free transportation to the six inspectors to be limited to the territory in which each inspector is officially required to travel.

20. Canadian Forestry Association's demonstration car and necessary attendants, also demonstration sets in regular baggage car service.

21. Shipments of fish eggs, fish fry, fingerlings and parent fish, of sporting fish varieties only, and attendants in charge, when made by Dominion or Provincial Governments; Dominion or Provincial Governments' fish cars when engaged in the transportation of such shipments; and return of attendants, fish cars and empty containers used in connection with the transportation of such shipments.

22. Railroad Y.M.C.A. officers and employees bona fide engaged in railway work, and dependent members of their families, over railway upon which railroad branch of the Y.M.C.A. at which employed is located; also such general officers of the Y.M.C.A. as are bona fide engaged in railway work.

23. Fire rangers within their respective districts, employed by Provincial Governments, when authorized by the Board.

24. Forest officers, Dominion Government, appointed to patrol along a line of railway under construction or in operation through the district for which they are appointed and while in the discharge of their duties.

25. Board of Grain Commissioners.—For the commissioners, the secretary of the board, the chief inspector, and the assistant chief inspector, the chief weighmaster and assistant chief weighmaster, and free transportation within the Western Division for the assistant grain commissioners

and within the Eastern Division for the principal inspection officer under the board in that division.

26. Department of National Revenue.—Officers examining baggage, inspectors and their assistants, and other duly accredited officials of the Department of National Revenue, when required by the minister.

27. Post Office Department.—Persons travelling with mail on postal service, or any duly accredited official of the Post Office Department when required by the Postmaster General.

28. Police—when sworn in under section 449.

29. Lieutenant-Governors and members of the provincial cabinets of the various provinces, over all lines in Canada during term of office.

30. Canadian Radio Broadcasting Commission—

    Chairman,
    Two commissioners,
    Permanent secretary.

31. Ex-ministers of the Department of Railways and Canals, and ex-members of the Board of Railway Commissioners, and dependent members of their families; and such ex-officers of the Railway Branch of the Department of Railways and Canals and of the Board of Railway Commissioners, and dependent members of their families, as the Board may authorize on application of the railways; and dependent members of the families of members of the Board and such officers and staff of the Board as the Board may determine.

32. General officers of railway labour organizations who devote substantially all their working time to railway matters, and dependent members of their families.

33. Ministers Plenipotentiary and Envoys Extraordinary for the Dominion of Canada, Canadian High Commissioner in England, and dependent members of their families.

34. Transportation under contracts, or for services rendered to the company by experts representing the vendor.

    (*a*) No free transportation shall be given to persons or corporations holding contracts with railways, save and except in cases when the contract so provides and, in any such case, free transportation shall be confined to persons actually and actively engaged in carrying out the said contract. The company shall, on request of the Board, furnish full particulars to justify the issuance of such transportation, including, when requested, that portion of the contract concerning free transportation;

    (*b*) A carrier using a commodity, appliance, or apparatus, with respect to which it desires the services of an expert or experts representing the vendor of such commodity, appliance, or apparatus to ensure the proper use, maintenance, or operation thereof, may give free transportation to such persons, but only for this purpose and to the extent necessary in the performance of that duty.

(2) That the periodical returns to be filed with the Board, as required by section 345 of the Railway Act, duly verified by affidavit as prescribed by section (3) hereof, shall contain the following particulars:—

1. A general statement indicating the number of annual and trip passes and reduced rate transportation issued under each respective series to—

(*a*) The directors of the company and their families;

(*b*) The officers, agents, and employees of the company whose names are at the time of the issue of transportation carried on the payroll of the company and who devote their time exclusively to the performance of duties on behalf of the company, and their families;

(*c*) The officers, agents, and employees of other railway and steamship companies whose names are at the time of the issue of transportation carried on the payroll of such companies and who devote their time exclusively to the performance of duties on behalf of such companies, and their families, upon the application of the officer authorized to make requests for free transportation;

(*d*) Retired, pensioned or superannuated officers and employees as are carried on the company's official records, and dependent members of their families;

(*e*) Dependent members of the families of deceased officers or employees; and remains of deceased officers or employees or dependent members of their families.

Transportation issued to or on account of officers, agents, or employees who devote only a portion of their time to the interests of the company; furloughed officers or employees; and officers or employees who have become disabled or infirm in the service of the company, shall be reported in full detail.

The company shall keep records available and convenient for examination, whenever necessary, of such data and information as will justify the lawful issue of all, or any, of the free or reduced rate transportation issued by the company, which shall at all times be available for the inspection of the Board.

2. A detailed typewritten statement as to all other persons to whom free or reduced rate transportation for passenger traffic has been issued under the provisions of section 345 of the Railway Act, or of the orders or rulings of the Board, or of special Acts of Parliament, during the period covered by the returns, indicating kind of pass; series; numbers; names; position, title or occupation of the person or such description as to place the Board in a position to investigate them if necessary; and territory; also a statement of the total number of passes (annual and trip separately) and reduced rates issued to each numbered class as set out in section (1) hereof.

3. Such returns to be filed as follows for the periods set out in each year:—

January to March, inclusive, by May 1.
April to June, inclusive, by August 1.
July to September, inclusive, by November 1.
October to December, inclusive, by February 1.

(3) The affidavit of verification covering all such returns shall be made and sworn to by an officer of the company having full knowledge of all such free or reduced rate transportation issued by the company and having access to all the records necessary to justify the issue thereof, and such affidavit of verification shall specify,—

(*a*) That I am an officer of the said company having full knowledge of all the free or reduced rate transportation issued by the said company, and having the custody of, or access to, all the records of the company from which the returns of such transportation are made up under the provisions of section 345 of the Railway Act;

(*b*) That I have caused records of free transportation issued by the said company to be kept in accordance with the provisions of the said section 345 of the Railway Act and the regulations and directions of the

Board of Railway Commissioners for Canada by its General Orders, and the return of such free or reduced transportation submitted herewith for the period named herein has been prepared from such records;

(*c*) That to the best of my knowledge and belief all free or reduced rate transportation issued by the company is included in the return submitted herewith, and has been issued in compliance with the provisions of the Railway Act and of the orders and regulations of the said Board made thereunder; and that none of the same has been issued that is not authorized by law.

(4) That the companies shall make reports to the Board giving detailed information concerning all instances of misuse of free transportation discovered by them.

(5) That all orders and general orders dealing with the issue of free or reduced rate transportation by railway companies heretofore made and issued by the Board, excepting General Order No. 290, dated the 12th day of April, 1920, be, and they are hereby, rescinded.

H. GUTHRIE,
Chief Commissioner,
Board of Railway Commissioners for Canada.

SUMMARIES OF ORDERS ISSUED BY THE BOARD OF RAILWAY COMMISSIONERS

52622. Dec. 31—Approving abandonment of operation of Orford Mountain Subd'n of field Subd'n from Port Hope to Peterboro, Ont.

52621. Dec. 31—Refusing application of C.N. Rys. for abandonment of portion of its Lake-C.P.R. between mile 0·95 and 16·0, remainder of line between mile 16·0 and Eastman, Que., to be maintained.

52623. Jan. 2—Declaring C.P.R. crossing near Huntingdon, B.C., protected to Board's satisfaction.

52624. Jan. 2—Declaring C.P.R. crossing, second south of Canrobert Station, Que., protected to Board's satisfaction.

52625. Jan. 2—Declaring C.N. Rys. crossing in Village of Maymont, Sask., protected to Board's satisfaction so long as present speed limitation of 10 miles an hour is in effect.

52626. Jan. 2—Extending until June 1, 1936, time within which C.N. Rys. may install bell and wigwag at St. Eleanor's Crossing, west of Summerside, P.E.I.

52627. Jan. 2—Extending until June 1, 1936, time within which C.N. Rys. may install bell and wigwag at crossing at mile 38·44 Kensington Subd'n, P.E.I.

52628. Jan. 2—Directing Michigan Central R.R. to replace two lightning flash signals on west side of crossing of Clifton Hill Street, Niagara Falls, Ont., by bells and wigwags.

52629. Jan. 2—Authorizing B.C. Dep't Public Works to construct overhead bridge across C.P.R., C.N. Rys. and G.N.R., on north and south banks of Fraser River at New Westminster, B.C.

52630. Jan. 2—Declaring C.N. Rys. crossing 1½ miles south of Vittoria, Ont., protected to Board's satisfaction.

52631. Jan. 4—Extending until June 1, 1936, time within which C.N. Rys. may install wigwag signal at crossing at mile 6·5 Kensington Subd'n, P.E.I.

52632. Jan. 3—Authorizing C.N. Rys. to eliminate track circuits on north track at crossing of Prince Edward Street, Brighton, Ont.

52633. Jan. 6—Approving Detroit & Windsor Subway Co., and Detroit & Canada Tunnel Co., Supp. 5 to tariff C.R.C. No. 18 covering tolls to be charged in respect of the Detroit Tunnel.

52634. Jan. 4—Approving agreement between Bell Telephone Co., and La Compagnie de Telephone de la Ville d'Arthabaska.

52635. Dec. 30—Refusing application of City of Hamilton for an Order apportioning cost of highway bridge over Desjardins Canal at York Street among City of Hamilton, T.H.B. Ry., C.P.R., and Desjardins Canal Co., or Dominion Department representing the Crown in said Canal Co.

52636. Jan. 3—Declaring C.P.R. crossing of Agnes Street, first east of Chaudiere River Bridge, Lake Megantic, Que., protected to Board's satisfaction so long as speed limitation of 10 miles an hour is in effect.

52637. Jan. 4—Extending until June 1, 1936, time within which C.N. Rys. may install bell and wigwag at crossing of main road at Richmond, P.E.I.

52638. Jan. 4—Extending until June 1, 1936, time within which C.N. Rys. may install bell and wigwag at crossing of Station Road, Bic, Que.

52639. Jan. 7—Authorizing Great Northern Ry. to install automatic signals for protection of trains operating through connections between C.P.R. and Midland Ry. of Manitoba, near Portage la Prairie, Man.

52640. Jan. 7—Declaring Grand River Ry. crossing of Park Street, Waterloo, Ont., protected to Board's satisfaction so long as present speed limitation of 10 miles an hour is in effect.

52641. Jan. 6—Approving location of C.N. Rys. proposed portable shelter to be erected at Bigras Island, Que.

52642. Jan. 6—Declaring C.P.R. crossing of College Street, Vernon, B.C., protected to Board's satisfaction so long as present speed limitation of 10 miles an hour is in effect.

52643. Jan. 4—Refusing application of Mun. of Sacre-Coeur de Jesus de Crabtree Mills, Que., that culvert under C.N. Rys. at public road between Lots 263 and 265 be constructed at expense of C.N. Rys.

52644. Jan. 7—Refusing application of Transportation Commission of Maritime Board of Trade for reduction in rates on potatoes by 3 cents per bushel or 5 cents per 100 pounds, carloads, to correspond with reduction in Ontario and Quebec.

52645. Jan. 7—Aproving and authorizing clearances at C.N. Rys. siding to serve National Cash Register Co., on Dundas Street, Toronto, Ont.

52646. Jan. 7—Extending until July 1, 1936, time within which C.N. Rys. may install bell and wigwag at crossing of Highway No. 8 at Blissfield, N.B.

52647. Jan. 7—Extending until July 1, 1936, time within which C.N. Rys. may install bell and wigwag at crossing of Highway No. 11 at Jacquet River, N.B.

52648. Jan. 7—Extending until July 1, 1936, time within which C.N. Rys. may install bell and wigwag at crossing of Highway No. 8, at Underhill, N.B.

52649. Jan. 8—Amending Order 52164, Aug. 16, 1935, by striking out figures "4,500.00" in 4th line of paragraph 2, and substituting therefor figures "$4,606.88"—Amount payable out of Railway Grade Crossing Fund for construction of diversion of highway in Village of Eastman, Que.,—C.P.R.

52650. Jan. 8—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in tariffs C.R.C. Nos. 738 and 739 filed by Temiscouata Ry. under Sec. 9.
52651.

52652. Jan. 8—Declaring C.N. Rys. crossing at Arthur Street, Harriston, Ont., protected to Board's satisfaction.

52653. Jan. 8—Declaring C.P.R. crossing at Union Point Road, Fairville, N.B., protected to Board's satisfaction.

52654. Jan. 7—Declaring C.P.R. crossing 2·7 miles west of Kenilworth Station, Ont., protected to Board's satisfaction.

52655. Jan. 9—Declaring C.P.R. crossing of Daniel Street, Arnprior, Ont., protected to Board's satisfaction.

52656. Jan. 9—Declaring C.P.R. crossing of William Street, Carleton Place, Ont., protected to Board's satisfaction.

52657. Jan. 8—Extending until July 1, 1936, time within which C.N. Rys. may install bell and wigwag at crossing of Highway No. 2, at Anagance, N.B.

52658. Jan. 7—Extending until July 1, 1936, time within which C.N. Rys. may install bell and wigwag at crossing of Highway No. 11 at Charlo, N.B.

52659. Jan. 8—Declaring C.N. Rys. crossing of St. Johns Highway between Brosseau and Lacadie, Que., protected to Board's satisfaction.

52660. Jan. 9—Declaring C.N. Rys. crossing of Lady Hammond Road, Halifax, N.S., protected to Board's satisfaction.

52661. Jan. 10—Extending until July, 1936, time within which C.N. Rys. may install bell and wigwag at Mortimer Crossing, one mile north of Harcourt, N.B.

52662. Jan. 8—Approving plans and profile showing construction of crossing over C.N. Rys. on east side of Russell Hill Road, Forest Hill, Ont.

52663. Jan. 9—Relieving C.P.R. from maintaining cattle guards at nine crossings on its Thessalon Subd'n, Ont.

52664. Jan. 8—Relieving C.P.R. from maintaining cattle guards at 17 crossings on its Hamilton-Goderich Subd'n, Ont.

52665. Jan. 10—Extending until July 1, 1936, time within which C.N. Rys. may install bell and wigwag at crossing of Highway No. 8, at Covered Bridge, N.B.

52666. Jan. 10—Declaring Pere Marquette Ry. crossing of Provincial Highway No. 8, at Pelton, Ont., protected to Board's satisfaction.

52667. Jan. 10—Declaring C.N. Rys. crossing, first west of wharf at Newcastle, N.B., (Williamson Crossing) protected to Board's satisfaction so long as speed restriction is in effect.

52668. Jan. 13—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls
52669. published in tariffs filed by C.P.R. under sec. 9.

52670. Jan. 13—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in tariffs filed by Fredericton & Grand Lake Coal & Ry. under sec. 9.

52671. Jan. 14—Approving plan showing proposed removal of derails Nos. 10 and 23 in C.P.R. main line at crossing over Oshawa Electric Ry. at Oshawa, Ont.

52672. Jan. 14—Authorizing C.P.R. to close crossings at mileage 53·3 and 72·6, Wilkie Subd'n, Sask.

52673. Jan. 14—Declaring C.N. Rys. crossing at Melvin Avenue, Sudbury, Ont., protected to Board's satisfaction.

52674. Jan. 16—Disallowing as from Jan. 15, 1936, Note "B," reading "Rates shown are published to meet competition and will not apply to intermediate stations in Canada," published in Item 800-A, Supp. 2 to Southwestern Lines Tariff No. 125-I, C.R.C. No. 420, issued by J. R. Peel, Agent, and re-issued as Supp. 4 to said tariff.

52675. Jan. 15—Declaring C.N. Rys. crossing, first east of New Sarum shelter, N.B., protected to Board's satisfaction.

52676. Jan. 16—Authorizing Ont. Dep't Highways to divert Provincial Highway in Lot 8, Con. 6, Tp. North Crosby, Co. Leeds, Ont., and move existing level crossing of C.N. Rys. 410 feet approximately to northeast, and close existing crossing.

52677. Jan. 14—Directing that C.P.R. may install bell and wigwag at crossing of Highway 2 at Bayard, N.B.

52678. Jan. 14—Directing that the C.P.R. install bell and wigwag at crossing of highway at Florenceville, N.B.

52679. Jan. 14—Directing that C.P.R. install bell and wigwag at crossing of highway at Peel, N.B.

52680. Jan. 14—Directing that C.P.R. install bell and wigwag at crossing of highway at South Bay, N.B.

52681. Jan. 14—Directing that C.P.R. install bell and wigwag at crossing of highway at Bath (Lower), N.B.

52682. Jan. 14—Directing that C.P.R. install bell and wigwag at crossing of highway at Perth (three miles below), N.B.

52683. Jan. 16—Relieving C.P.R. from fencing between certain points on its North Toronto Subd'n, Ont.

52684. Jan. 17—Declaring Quebec Central Ry. crossing of Levis-Jackman Highway 2·5 miles south of Ste. Marie, Que., protected to Board's satisfaction.

52685. Jan. 17—Authorizing Canadian Passenger Ass'n to publish General Order No. 549, Regulations governing Baggage Car Traffic in Canada, in the *Canada Gazette*.

52686. Jan. 17—Authorizing Bienfait Commercial Coal Co. to construct two entries under C.P.R. in west half of Sec. 23-2-7 W2M., Sask.

52687. Jan. 14—Directing that C.P.R. install bell and wigwag at crossing of highway at Kilburn (Lower), N.B.

52688. Jan. 18—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, toll published in tariff C.R.C. No. 983, filed by Dominion Atlantic Ry. under sec. 9.

52689. Jan. 17—Declaring London & Port Stanley Ry. crossing of Elm Street, St. Thomas, Ont., protected to Board's satisfaction, so long as speed limitation of 10 miles an hour is in effect.

52690. Jan. 18—Declaring C.N. Rys. crossing at mileage 19·6 Yorkton Subd'n, Rural Mun. of Orkney No. 244, Sask., protected to Board's satisfaction.

52691. Jan. 17—Approving Winnipeg River Ry. by-law authorizing Freight Traffic Manager to issue tariffs of tolls.

52692. Jan. 17—Approving Winnipeg River Railway's Standard Mileage Tariff C.R.C. No. 1.

52693. Jan. 17—Authorizing C.P.R. to close two crossings, at mileage 34·1 and 35·6 on its Prince Albert Subd'n, Sask.

52694. Jan. 16—Authorizing N.B. Dep't Public Works to move crossing of double track of C.N. Rys. at Cook's Brook, N.B., to a new site approximately 325 feet to the east.

52695. Jan. 20—Approving plan and profile showing diversion of highway to be constructed at White Point, N.S., C.N. Rys.

52696. Jan. 21—Authorizing New York Central R.R. to remove shelter sheds at Oakland, Ont.

52697. Jan. 21—Authorizing New York Central Ry. to remove shelter sheds at Rosslyn, 3·31 miles south of Comber, Ont.

52698. Jan. 21—Authorizing New York Central R.R. to remove shelter sheds at Southwick, 4 miles east of Amherstburg, Ont.

52699. Jan. 21—Authorizing New York Central R.R. to remove shelter sheds at Edgars, 4·7 miles west of Essex, Ont.

52700. Jan. 22—Appointing, until further Order, N. Bruce Lyon, a member of the Board's staff, as Acting Secretary to act in place of the Secretary and exercising his powers in his absence from illness or other cause.

52701. Jan. 21—Rescinding Order 52642, January 6, 1936, and declaring C.N. Rys. crossing of College Street, Vernon, B.C., protected to Board's satisfaction so long as speed limitation of 10 miles an hour is in effect.

52702. Jan. 21—Authorizing C.P.R. to operate its trains under overhead bridge on Provincial Highway No. 7, Tp. of Oso, Ont., north of Sharbot Lake, Ont.

52703. Jan. 22—Declaring C.N. Rys. crossing, first east of Portage, P.E.I., protected to Board's satisfaction (Foxley River Road).

52704. Jan. 22—Approving location of Nipissing Central Ry's. proposed combined waiting room and freight shed to be erected at Evain, mileage 53·45, Tp. Boischatel, Co. Temiscamingue, Que.

52705. Jan. 22—Approving erection of proposed frame passenger station by Nipissing Central Ry. at Arntfield, Que., to replace combined waiting room and freight shed to be moved to Evain.

52706. Jan. 23—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, toll published in item 558A of Supp. 29 to tariff C.R.C. No. E-4742 filed by C.P.R. under sec. 9.

52707. Jan. 22—Amending Order 51692, Jan. 25, 1935, by striking out words "from the amount appropriated to this fund under Unemployment and Farm Relief Act, 1931, and the Unemployment and Farm Relief Continuance Act, 1932, approved by Governor in Council under Order-in-Council P.C. 3075, dated 12th December, 1931," in the operative part of the Order—Diversion of North Bay-Sudbury Road by Ont. Dep't Northern Development.

52708. Jan. 21—Extending until June 1, 1936, time within which C.N. Rys. may install bell and wigwag at southeast angle of crossing of Irishtown Road, Sunny Brae, N.B.

52709. Jan. 23—Authorizing C.P.R. to construct spur to serve Standard Sand & Gravel Limited, near St. Felix de Valois, Que.

52710. Jan. 24—Authorizing C.P.R. to construct spur to serve Kraft-Phenix Cheese Co., Ltd., at Outremont, Que.

52711. Jan. 22—Recommending to Governor in Council for sanction agreement between C.P.R. and C.N. Rys. for joint use of certain trackage near Edmundston, N.B.

52712. Jan. 22—Authorizing abandonment of operation by C.P.R. of its line from Cyr Diamond to Edmundston Yard, N.B., a distance of 28·2 miles, and authorizing C.P.R. to connect with C.N.Rys.

52713. Jan. 24—Declaring C.N.Rys. crossing ¾ mile east of Ingersoll Station, Ont., protected to Board's satisfaction.

52714. Jan. 24—Declaring C.N. Rys. crossing, first west of Rymal Station, Ont., protected to Board's satisfaction.

52715. Jan. 24—Declaring C.N. Rys. crossing of King Street, Sherbrooke, Que., protected to Board's satisfaction.

52716. Jan. 24—Declaring C.P.R. crossing of Durham Road (Provincial Highway No. 4) ·7 mile east of Glen Station, Ont., protected to Board's satisfaction for eastbound traffic; for westbound traffic slow order board to be erected forthwith and engine whistle to be sounded continuously from whistle post to crossing.

52717. Jan. 24—Approving plan showing proposed extension of ringing circuits of bell at C.N.Rys. crossing of Harwich Street, and wigwag and bell at crossing of Wilson Street, Woodstock, Ont.

52718. Jan. 24—Declaring C.P.R. crossing one mile east of Fairville, N.B., (Sand Cove Crossing) satisfactorily protected so long as speed limitation of 10 miles an hour is in effect, and all switching movements brought to a full stop before proceeding over crossing.

52719. Jan. 29—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, toll published from O'Brien's Siding, N.S., in item 226-B of Supp. 28 to tariff C.R.C. No. 906 filed by Dominion Atlantic Ry. under sec. 9.

52720. Jan. 29—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tariffs filed by C.N.Rys. under sec. 3.

52721. Jan. 27—Declaring C.N.Rys. crossing of Angeline Street, Lindsay, Ont., protected to Board's satisfaction so long as speed limitation of 10 miles an hour is in effect.

52722. Jan. 30—Authorizing Alberta Dep't of Public Works to construct a crossing over C.N.Rys. in SW¼ Sec. 29-53-8 W5M., Alta.

52723. Jan. 30—Authorizing C.P.R. to construct spur to serve coal lands of C.P.R. lying south of Red Deer River, near East Coulee, Alta.

52724. Jan. 31—Approving agreement between Bell Telephone Co., and the Pontiac Rural Telephone Co., Ltd.

52725. Jan. 16—Authorizing C.N.Rys. to operate their trains through junction of their Huntsville and Bala Subd'ns at Washago, Ont., without stopping.

52726. Feb. 1—Directing C.N.Rys. to install double bells and wigwags at crossing of 115th Avenue, Edmonton, Alta.

52727. Feb. 1—Approving and authorizing clearances at C.N.Rys. spur serving W. Adler, near Bienfait, Sask.

52728. Jan. 27—Declaring C.N.Rys. crossing of Ninth Avenue, Iberville, Que., protected satisfactorily so long as speed limitation of ten miles an hour is in effect.

52729. Feb. 1—Extending until Mar. 17, 1936, time within which C.N.Rys. may install double bells and wigwags at crossing of Yale Road, Tp. Chilliwack, B.C.

52730. Jan. 31—Approving construction by City of Brandon, Man., of a bridge over siding of the C.P.R. on a lane between 8th and 9th Streets and connecting Stickney and Assiniboine Avenues, Brandon, Man.

52731. Jan. 31—Approving and authorizing clearances of viaduct (north approach to 9th Street Bridge) over C.P.R. spur in lane between Assiniboine and Stickney Avenues and between 8th and 9th Streets, Brandon, Man.

MAR 4 1936

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of the Canadian National Railways for an Order granting it leave to abandon the operation of that portion of the Hemmingford Subdivision in the province of Quebec, between St. Remi (M. 6·4) and Hemmingford (M. 21·3)—a distance of 14·9 miles.

File 39310.7

JUDGMENT

GARCEAU, F. N., *Deputy Chief Commissioner:*

This line was built in 1852 and started under a charter of the Lake St. Louis and Province Line Railway Company which in 1850 joined with the Montreal and Lachine Railroad Company to become the Montreal and New York Railroad Company. In 1857, this latter company joined with the Champlain Railroad Company, which in 1864 was leased, and in 1872 sold to the Grand Trunk Railroad Company, which in turn was amalgamated with the Canadian National Railways' Company in 1923.

As said in the application, the railway asks to abandon part of that line from St. Remi to Hemmingford, a distance of 14·9 miles. The railway filed a statement showing the operations of 1930, 1931, 1933 and 1934. In 1930-31 the receipts were $27,742, but there was a deficit of $4,391. In 1933, the operating expenses were $24,150 and the receipts only $12,977, leaving a deficit of $11,173. In 1934, the receipts were $18,982 and the expenses $24,290, leaving a deficit of $5,308.

Prior to 1930 there was a twice daily train service between Hemmingford and Montreal and after that date, daily, up to the last part of 1930 or the beginning of 1931.

Mr. Dupuis, K.C., attorney for the municipalities concerned, insisted that the company ought to file a statement showing the operations prior to 1930, asserting that this line had been operated profitably at that time. The fact that there were two daily trains both ways corroborates this assertion of Mr. Dupuis. We see by the statement filed that the company's earnings were higher in 1934 than in 1933.

The necessity of a railway was demonstrated by several witnesses. The railway company also admitted that there is no highway open to motor vehicles during winter. It follows that if this application were granted, the inhabitants of Hemmingford and other municipalities would be deprived of all transportation facilities in winter.

The representatives of the municipalities concerned insisted that conditions have improved and that the proper service would benefit the railways to such an extent as to cover any deficits.

This contention was partly substantiated by the receipts from milk in 1930 and in 1934. In 1930, although there was a daily service, the receipts were only $1,162 and in 1934 the receipts for milk were $1,653 during the three winter months.

The farmers of Hemmingford and intermediate stations to St. Remi are milk, poultry and egg producers. In winter, even with proper roads, such products cannot be shipped by trucks as they become chilled or frozen before reaching Montreal, which is forty miles from Hemmingford.

The railway company's receipts from milk in 1934 establish the fact that the milk industry is most important in that part of the country and that, should the line be abandoned, as requested, the farmers would have no means of shipping their cream and milk to Montreal and would have to turn them over to the local factory, thereby suffering a loss of 50 per cent which might mean ruin to many of them.

The railway company lost the summer trade which went to trucks and buses. It is on record that milk is delivered in better condition when carried by the railway than when shipped by truck and the travelling public would use the railway if a cheaper and better service were provided.

In 1934 the deficit was $5,308 but in this amount $1,100 were allowed for divisional supervision. It is to be presumed that this same expense would be incurred by the railways even if the abandonment were granted, so that we may conclude that the real deficit of the railway would be $4,208.

While the railways can show their deficits, it is not so easy to demonstrate definitely what losses the inhabitants would suffer through an abandonment.

The railway company's earnings from milk shipments in 1934 are given as $1,653. For the whole of 1930, the railway received from shipments of the same commodity, $1,162.

The above figures together with the cost of rail transport equivalent to around 20 cents per 100 pounds allow us to establish the total milk revenue of the farmers during this period of approximately three months. If we divide the amount received by the railway by 20 cents (see Evidence, p. 1858) the cost of transportation per 100 pounds, we find that the farmers shipped over 826,500 pounds.

We know by Mr. Fisher's evidence (p. 1855) that the farmers were paid $1.85 per 100 pounds f.o.b. Montreal, or an amount of $15,290, from which we must deduct the cost of transportation, $1,653, to ascertain the net amount received, namely, $13,637.

Without the daily railway service, the farmers would have been obliged to sell their milk and cream to the local factory and would have received approximately 50 per cent, namely $6,818.50 losing an equal amount. Their Montreal clients would not have stood three months without a supply of milk, and we may conclude that most of these farmers would have been obliged to send their milk to the local milk factory for the balance of the year, and suffer a loss of the difference between the Montreal price and the price paid by the factory—about 50 per cent.

This case has much similarity with the application of the Canadian National Railways, for leave to abandon the operation of its Locksley Subdivision, between Golden Lake and National Junction, Ont.,—F. 39310·14, in which it was held:

> "I feel sure that, in spite of the substantial loss shown by the applicant, the inconvenience to the public would be of such a serious nature that, for the present at least, the application should be refused."

There is another aspect to this question, a most important one. Unemployment has been declared and is the greatest problem of the moment. It is a national calamity and everything must be done and the greatest sacrifices must be incurred to remedy the situation. Abandonment of this line would mean the dismissal of twelve employees (see p. 1853 of the Evidence):

> "The DEPUTY CHIEF: How many employees would be dismissed if the line is abandoned?
>
> "Mr. PRINGLE: There would be about twelve.
>
> "The DEPUTY CHIEF: At a salary of about $1,300 each?
>
> "Mr. PRINGLE: Yes."

The Canadian National Railways would save $4,108 but the employees of the railways would lose $15,600. The farmers would lose on their milk alone $5,556 during the winter period and much more during the balance of the year. How many of them would become dependent on relief cannot be ascertained but there would be some.

As aforesaid, the necessity of the railway service was admitted by the company in giving a daily winter service in 1934, at the request of interested parties.

The 1931 census gives Hemmingford a rural population of 1,737; 368 being residents of the village, the balance comprising farmers or residents in the rural section. Sherrington has a population of 1,162; St. Michel, 1,262, and Barrington, 562.

Agriculture and its connected industries, dairy, poultry, etc., provide for the maintenance and livelihood of most of the population.

As will appear from the figures hereinafter quoted, traffic is on the increase. The earnings for 1934 were $6,005 higher than those of 1933, although the operating expenses were approximately the same. The operating loss for 1934 was $5,866 less than for 1933.

Moreover, there are no parallel lines and the abandonment, if allowed, would mean that Hemmingford would be 15 miles distant from the nearest passenger station. On the Coteau-Noyan line of the Canadian National Railways, there is a passenger service between Coteau and Aubrey only, a distance of 25·6 miles. Aubrey is located ten miles from Barrington.

The railway declared itself ready to co-operate with shippers but the same attitude was not taken by the public. All interested municipalities ought to substantiate the promise mentioned in Exhibit No. 4 filed by Hemmingford.

With a view to giving the public a further opportunity to patronize the railway, I would dismiss the application but without prejudice to any future application by the company, should the public fail to utilize the railway service sufficiently to justify the operation of this line.

January 31, 1936.

Commissioners Norris and Stone concurred.

Requête de la compagnie des chemins de fer Nationaux du Canada, demandant qu'une ordonnance soit rendue l'autorisant à discontinuer l'exploitation de la partie de sa ligne sur sa subdivision de Hemmingford, dans la province de Québec, qui s'étend de St-Rémi (mille 6·4) à Hemmingford (mille 21·3), soit un parcours de 14·9 milles.

Dossier N°39310·7

JUGEMENT

GARCEAU, F. N., Commissaire en chef suppléant:

Cette ligne fut parachevée en 1852; la construction en avait été commencée en vertu d'une charte de la compagnie Lake St. Louis and Province Line Railway qui se fusionna, en 1850, avec la compagnie du chemin de fer Montreal and Lachine pour devenir la compagnie Montreal and New York Railroad. En 1857, cette dernière compagnie se fusionna avec la compagnie Champlain Railroad qui, en 1864, fut louée et, en 1872, vendue à la compagnie du chemin de fer Grand-Tronc, laquelle à son tour fut fusionnée avec la compagnie des chemins de fer Nationaux du Canada, en 1923.

Tel que mentionné dans la requête, le chemin de fer demande d'être autorisé à discontinuer l'exploitation de la partie de la ligne qui s'étend de St-Rémi à Hemmingford, soit un parcours de 14.9 milles. Il a produit un état de ses opérations pour les années 1930, 1931, 1933 et 1934. En 1930-31, les recettes furent de $27,742.00, mais il y eut un déficit de $4,391.00. En 1933, les dépenses d'exploitation furent de $24,150.00 et les recettes de $12,977.00 seulement, de là un déficit de $11,173.00. En 1934, les recettes furent de $18,982.00 et les dépenses de $24,290.00, de là un déficit de $5,308.00.

Avant 1930, il y avait un service de deux trains par jour entre Hemmingford et Montréal, et par la suite il n'y eut plus qu'un service d'un train par jour, et ce jusqu'à la fin de 1930 ou jusqu'au commencement de 1931.

M. Dupuis, C.R., procureur des municipalités intéressées, insista sur le fait que la compagnie aurait dû produire un état de ses opérations avant 1930, prétendant que cette ligne avait été exploitée avec profit à cette époque. Le fait qu'il existait un service de deux trains par jour dans les deux directions confirme cette assertion de M. Dupuis. Nous constatons par l'état versé au dossier que les revenus de la compagnie furent plus élevés en 1934 qu'en 1933.

Plusieurs témoins ont démontré la nécessité d'un chemin de fer. La compagnie a aussi admis qu'il n'y avait pas, durant l'hiver, de route ouverte à la circulation des véhicules-moteurs. Il s'ensuit que si la présente requête était accordée, les habitants de Hemmingford et des autres municipalités seraient privés de toutes facilités de transport durant l'hiver.

Les représentants des municipalités intéressées ont appuyé fortement sur le fait que les conditions s'étaient améliorées et que les chemins de fer, en procurant un service de trains convenable, retireraient assez de bénéfices pour combler les déficits.

Cette prétention fut en partie prouvée par l'état des recettes provenant du trafic du lait au cours de 1930 et de 1934. En 1930, avec même un service quotidien, les recettes ne furent que de $1,162, et en 1934, les recettes provenant du trafic du lait furent de $1,653 durant les trois mois d'hiver.

Les fermiers de Hemmingford et des stations intermédiaires jusqu'à St-Rémi sont des producteurs de lait, de volailles et d'œufs. En hiver, même avec des routes convenables, ces produits ne peuvent pas être expédiés par camion à cause du froid et de la gelée qui les détériorent avant leur arrivée à Montréal qui se trouve à quarante milles de Hemmingford.

Les recettes du chemin de fer, en 1934, provenant du lait établissent le fait que l'industrie laitière est des plus importantes dans cette partie du pays, et que

si la ligne était abandonnée comme on le demande, les cultivateurs n'auraient plus de moyens de transport pour expédier leur crème et leur lait à Montréal et se verraient forcés d'envoyer ces produits aux fabriques locales, subissant par là une perte de 50%, ce qui pourrait occasionner la ruine pour plusieurs d'entre eux.

La compagnie du chemin de fer a perdu le trafic d'été au bénéfice des camions et des autobus. C'est un fait admis que le lait est livré en meilleure condition par le chemin de fer qu'il ne l'est par camions, et le public voyageur utiliserait le chemin de fer si celui-ci procurait un service amélioré et moins dispendieux.

En 1934, le déficit a été de $5,308, mais dans ce montant est comprise une somme de $1,100 allouée pour des fins d'inspection divisionnaire. Il est à présumer que cette même dépense serait encourue par le chemin de fer, si la requête d'abandon de cette ligne était accordée, de sorte que nous pouvons conclure que le déficit réel de la compagnie est de $4,208.

Alors que les chemins de fer peuvent établir leurs déficits, il n'est pas si facile de démontrer d'une façon définitive quelles seraient les pertes que les habitants auraient à subir par suite de l'abandon de cette ligne.

Les recettes du chemin de fer, en 1934, provenant des expéditions de lait s'établissent au montant de $1,653.00. Pour toute l'année de 1930, les revenus de la compagnie provenant des expéditions de ce même produit ont été de $1,162.00.

Les chiffres ci-dessus ainsi que le coût de transport par rail équivalant à environ 20c. par 100 livres nous permettent d'établir le revenu total des fermiers, provenant du lait, pour cette période d'à peu près trois mois. Si nous divisons le montant que la compagnie a reçu (voir preuve, p. 1858) par 20c., le coût du transport par 100 livres, nous constatons que les fermiers ont expédié au delà de 826,500 livres.

Nous savons par le témoignage de M. Fisher (p. 1855 de la preuve) qu'on a payé aux cultivateurs $1.85 les 100 livres pour leurs expéditions f.a.b. Montréal, ou un montant de $15,290.00 à même lequel nous devons déduire le coût de transport, savoir $1,653, pour déterminer le montant net reçu, à savoir, la somme de $13,637.00.

Sans le service quotidien du chemin de fer, les cultivateurs auraient été obligés de vendre leur lait et leur crème à la fabrique locale et auraient reçu environ 50% du montant ci-dessus, soit $6,818.00, perdant ainsi un montant égal à celui-ci. Leurs clients de Montréal ne seraient demeurés trois mois sans être approvisionnés de lait, et nous devons conclure que la plupart de ces cultivateurs auraient été obligés de vendre leur lait à la fabrique locale pour le reste de l'année, et subir la perte de la différence entre le prix de Montréal et celui payé par la fabrique—c'est-à-dire environ 50%.

Cette cause a beaucoup d'analogie avec cette requête du C.N.R. demandant d'être autorisé à discontinuer l'exploitation de sa subdivision de Locksley, entre Golden Lake et National Junction, Ont., Dossier N° 39310·14, dans laquelle il fut déclaré:

> "Je suis certain que malgré la perte importante démontrée par le requérant, l'inconvénient pour le public serait d'un caractère si sérieux que pour le présent du moins, la requête devrait être refusée."

Il y a un autre aspect à cette question, des plus importants. Le *chômage* est le problème le plus important de l'heure actuelle. Il est une *calamité nationale,* et l'on doit faire tout, y compris les plus grands sacrifices, pour apporter un remède à la situation. L'abandon de cette ligne signifierait le renvoi d'une douzaine d'employés (voir page 1853 de la preuve).

"Le COMMISSAIRE EN CHEF SUPPLÉANT: Combien d'employés seraient remerciés de leurs services si la ligne était abandonnée?

"M. PRINGLE: Environ douze.

"Le COMMISSAIRE EN CHEF SUPPLÉANT: A un salaire d'environ $1,300 chacun?

"M. PRINGLE: Oui."

La compagnie des chemins de fer Nationaux du Canada épargnerait $4,108.00, mais les employés du chemin de fer perdraient $15,600.00. Les cultivateurs perdraient dans leurs seules expéditions de lait la somme de $5,556.00 durant la période de l'hiver, et beaucoup plus le reste de l'année. Combien parmi eux deviendraient à la charge du secours direct? On ne peut pas le prévoir, mais il y en a qui le deviendraient.

Comme je l'ai dit plus haut, la nécessité du chemin de fer a été admise par la compagnie lorsqu'elle a donné un service d'hiver quotidien en 1934 à la demande des parties intéressées.

D'après le recensement de 1931, Hemmingford a une population rurale de 1,737 habitants; 368 étant des résidents du village, et les autres comprenant des cultivateurs ou des résidents de la partie rurale. Sherrington a une population de 1,162 habitants; St-Michel, 1,262, et Barrington, 562.

L'agriculture et les industries qui s'y rattachent, telle que l'industrie laitière, l'industrie de la volaille, etc., pourvoient au maintien et à l'existence de presque toute la population.

Il semblerait d'après les chiffres ci-après cités que le trafic augmente. Les recettes pour l'année de 1934 ont été de $6,005.00 plus élevés que celles de 1933 bien que les dépenses d'exploitation aient été à peu près les mêmes. La perte dans les frais d'exploitation pour 1934 a été de $5,866.00 moins élevée que celle de 1933.

En outre de cela, il n'existe pas de lignes parallèles, et l'abandon de cette ligne, si la requête était accordée, signifierait que Hemmingford se trouverait éloigné de 15 milles de la station de voyageurs la plus rapprochée. Sur la ligne Côteau-Noyan du C.N.R., il existe un service de trains de voyageurs entre Côteau et Aubrey seulement, soit un parcours de 25·6 milles. Aubrey se trouve à dix milles de Barrington.

Le chemin de fer a démontré qu'il était prêt à coopérer avec les expéditeurs, mais le public n'a pas pris la même attitude. Toutes les municipalités intéressées doivent mettre en pratique la promesse mentionnée dans l'Exhibit 4 versé au dossier par Hemmingford.

Afin de donner au public une autre occasion d'encourager le chemin de fer, je renverrais la requête sans préjudice à toute autre requête de la compagnie si le public ne se sert pas du chemin de fer suffisamment pour justifier l'exploitation de cette ligne.

Le 31 janvier 1936.

Les Commissaires Norris et Stone se sont ralliés au jugement ci-dessus.

ORDER No. 52772

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 165A of the Railway Act, for approval of the abandonment of that portion of the Hemmingford Subdivision, in the Province of Quebec, between St. Remi, mileage 6·4, and Hemmingford, mileage 21·3, a distance of 14·9 miles.

File No. 39310.7

TUESDAY, the 11th day of February, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Montreal, June 25, 1935, in the presence of counsel for and representatives of the applicants, the Town of Huntingdon, Village of Hemmingford, and municipalities interested, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused, without prejudice, however, to any future application the applicants may desire to make.

H. GUTHRIE,
Chief Commissioner.

Application of Gutta Percha and Rubber, Limited, Toronto, Ontario, for a ruling by the Board as to the Legal Rate applicable on two carloads of Rubber Boots and Shoes, shipped on February 8, 1935, via the Canadian Pacific Railway and the Dominion Atlantic Railway, from Toronto, Ontario, to Halifax, N.S., for export to Newfoundland.

File 39757

JUDGMENT

BY THE BOARD:

This matter was placed before the Board for decision by written submissions of the applicant under date of January 8, 1936, in which its contention is set out as follows:—

"On February 8, 1935, we shipped two carloads of rubber boots and shoes from Toronto to Halifax, N.S., for export to Newfoundland, via C.P.R. and D.A.R.

"The C.P.R. contend that the correct rate to apply is 90 cents, which is the third class domestic rate to Halifax, plus 3 cents unloading charge, as per C.P.R. tariff E-1810-A, C.R.C. E-4476.

"Our contention is that the proper rate is 46 cents, as per item 640 in Canadian Freight Association tariff 15-F, C.R.C. 733. This item distinctly quotes a fourth class rating to Halifax FOR EXPORT. It is true that no rate is quoted, but simply the basis. To obtain the rate reference must be made to C.P.R. tariff E-1740, C.R.C. E-4734, which publishes a fourth class rate of 46 cents. Rule 5 in this tariff states that the rates will not apply on traffic to Newfoundland, but the title page states that the tariff is governed by C.F.A. tariff 15-F, C.R.C. 733. The latter tariff in item 640 shows that the rate will apply to Halifax FOR EXPORT, and as the ultimate destination is not defined or limited in any way and as no territorial application is shown, we contend that the item covers all EXPORT TRAFFIC, including traffic to Newfoundland

and removes the application of rule 5 in C.P.R. tariff E-1740, C.R.C. E-4734.

"The C.P.R. further contend that in reading item 640 in C.F.A. tariff 15-F, C.R.C. 733, reference must be made to page 9 for the territorial application and that Territory "D" prohibits the use of the item on traffic to Newfoundland.

"Our contention is that as no territorial letter is shown in the item, no reference can be made to page 9 and even if reference could be made to page 9, the first paragraph, which distinctly states that the rates will apply to "Canadian Atlantic ports on export traffic," is the only paragraph that could be taken into consideration."

Applicant contends that "the proper rate is 46 cents, as per item 640 in Canadian Freight Association Tariff 15-F, C.R.C. 733," although stating that, in said tariff, "it is true that no rate is quoted, but simply the basis. To obtain the rate, reference must be made to Canadian Pacific Railway Tariff E-1740, C.R.C. E-4734." Inasmuch as it is stated the shipments were made on February 8, 1935, and Tariff C.R.C. E-4734 was not effective until March 8, 1935, applicant's reference to the tariff last named is not understood.

Canadian Freight Association Tariff C.R.C. 733 does not publish rates. It is a tariff of exceptions to Official Classification "applicable only in connection with tariffs making reference thereto." There are a great many tariffs with different territorial application and applying on various descriptions of traffic which bear notation to the effect that they are governed by this schedule of exceptions to Official Classification, but, clearly, this latter schedule does not extend, or, in any way, modify, the specific territorial or traffic application of the numerous tariffs which refer thereto. The situation is that the schedule of exceptions to Official Classification applies to such tariffs only to the extent and within the scope thereof as specifically described therein. Applicant appears to misapprehend the application of Tariff C.R.C. 733. It is a schedule which provides for nothing more nor less than certain changes in the classification rules, ratings and minimum weights contained in the classification by which the tariff is governed.

The starting point, therefore, is the tariff in which the rates are published which apply on traffic from Toronto to Halifax when destined to Newfoundland. Tariff C.R.C. E-4734, referred to by applicant, superseded Tariffs C.R.C. E-3956 and C.R.C. E-4118, and these last named tariffs were in force on February 8, 1935, but were not, as of that date, applicable on the shipments here in issue. Both these tariffs, which publish export class and commodity rates, respectively, state specifically that the rates named therein are "applicable on traffic consigned through to British and foreign countries, Cuba, the insular possessions of the United States (Philippine Islands, Puerto Rico, Hawaiian and Virgin Islands) and the Panama Canal Zone; but not applicable on traffic for points in Canada, the United States, Newfoundland or the Islands of St. Pierre and Miquelon." These tariffs contain a provision stating they are governed by the exceptions to Official Classification (C.F.A. C.R.C. 733), but, obviously, as already referred to herein, these exceptions to Official Classification are applicable only on traffic within the scope of the tariffs, which, as noted from their application above quoted, do not apply on traffic for points in Newfoundland.

The tariff in force on February 8, 1935, publishing rates applicable on traffic from Toronto to Halifax when destined to Newfoundland, is Canadian Pacific Railway C.R.C. E-4476. The application of this tariff, as set out on its title page, is from Canadian Pacific Railway stations, also stations on connecting lines, to Montreal, Quebec, Que., Saint John, West Saint John, Halifax, North Sydney, Sydney, Portland, Me., Boston and East Boston, Mass., applicable

only on traffic destined to Newfoundland or the Islands of St. Pierre and Miquelon. This tariff also contains a specific provision to the effect that it is governed (except as specified) by the Official Classification and by exceptions to Official Classification (C.R.C. 733). It stipulates that traffic to Halifax, destined to Newfoundland, shall be charged the domestic rates plus terminal charge of 3 cents per 100 pounds; subject to a maximum of the New York domestic rates plus 1 cent per 100 pounds.

Taking, first, the domestic rates, these are published in Canadian Pacific Railway Tariff C.R.C. E-3221, which is governed by the Canadian Freight Classification, consequently, Canadian Freight Association Tariff C.R.C. 733 has no application whatever here. Rubber boots and shoes, in carloads, are rated 3rd class, and the 3rd class rate, Toronto to Halifax, is 90 cents per 100 pounds and, adding terminal charge of 3 cents, makes the charge to Halifax 93 cents per 100 pounds.

The New York domestic rates are published in Canadian Pacific Railway Tariff C.R.C. E-4673, which is governed by the Official Classification and by exceptions to Official Classification (C.R.C. 733). The schedule last named provides, by item 300, that, from Toronto to New York, rubber boots and shoes, in carloads, are to be rated 2nd class and the 2nd class domestic rate, Toronto to New York, is 97 cents per 100 pounds and, adding 1 cent thereto, as provided by the tariff, makes the charge 98 cents per 100 pounds, which is higher than the domestic rate as above set out, consequently, the latter governs.

Item 640 in Canadian Freight Association Tariff C.R.C. 733, referred to by applicant, has no application with respect to the Canadian domestic rates, neither does it apply in connection with the New York domestic rates.

For the reasons above set out, the Board declares that the legal rate applicable on February 8, 1935, on rubber boots and shoes, carloads, from Toronto to Halifax, via the Canadian Pacific Railway and the Dominion Atlantic Railway, when destined to Newfoundland, was 90 cents per 100 pounds, plus terminal charge of 3 cents per 100 pounds.

Ottawa, Ont., February 11, 1936.

ORDER No. 52762

In the matter of the application of the Gutta Percha and Rubber, Limited, of Toronto, Ontario, for a ruling by the Board as to the legal rate applicable on two carloads of rubber boots and shoes, shipped on February 8, 1935, via the Canadian Pacific Railway and the Dominion Atlantic Railway from Toronto, Ontario, to Halifax, Nova Scotia, for export to Newfoundland.

File No. 39757

Tuesday, the 11th day of February, A.D. 1936.

Hon. Hugh Guthrie, K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*
J. A. Stoneman, *Commissioner.*
G. A. Stone, *Commissioner.*

Upon reading the submissions filed in support of the application and on behalf of the railway companies,—

The Board declares: That the legal rate applicable, on February 8, 1935, on rubber boots and shoes, carloads, from Toronto to Halifax, via the Canadian Pacific Railway and the Dominion Atlantic Railway, when destined to Newfoundland, was 90 cents per 100 pounds, plus terminal charge of 3 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

Application of the Canadian National Railways for an Order granting leave to abandon the operation of a portion of the Renfrew Subdivision between Two Rivers (M. 162·3) and Cache Lake (M. 166·8), on the Ottawa Division; and a portion of the Algonquin Subdivision between Cache Lake (M. 37·5) and Ravensworth (M. 70·5), on the Allandale Division —a total distance of 37·5 miles.

File No. 39310.17

Heard at Toronto, June 18, 1935.

JUDGMENT

COMMISSIONER STONEMAN:

The Canadian National Railways apply under Chapter 47 of the Statutes of Canada, 1932-33, for the approval of the Board to the abandonment of operation of the Renfrew Subdivision between Two Rivers (M. 162·3) and Cache Lake (M. 166·8), on the Ottawa Division; and a portion of the Algonquin Subdivision between Cache Lake (M. 37·5) and Ravensworth (M. 70·5), on the Allandale Division—a total distance of 37·5 miles.

Before the year 1933, unless there was a statutory or contractual provision requiring a railway company to operate its road, it was at liberty to abandon the whole or any portion of its line. The statute above referred to, which amends the Railway Act by adding section 165A, provides that—

> "The company may abandon the operation of any line of railway with the approval of the Board, and no company shall abandon the operation of any line of railway without such approval."

Brief Historical Review

Opened for operation 1897.

Built under statutory authority, Canada Act 54-55 Victoria, Chapter 98. In 1899 the Ottawa, Arnprior and Parry Sound Railway Company was amalgamated with the Canada Atlantic Railway Company, which in 1914 was amalgamated with the Grand Trunk Railway Company under Canada Act 4-5 George V, Chapter 59. The Grand Trunk Railway Company was amalgamated with the Canadian National Railway Company in 1923.

There is now no train service between Two Rivers and Cache Lake, Renfrew Subdivision. There is, however, the following:—

The railway company permits the summer residents to operate an automobile with steel wheels over its rails between Madawaska and Algonquin Park stations during the summer months. The schedule for the summer months of 1935 was as follows:—

WESTWARD		MOTOR CAR	EASTWARD	
Daily except Sunday and Monday	Monday only	Stations	Monday only	Daily except Sunday and Monday
4.00 p.m.	4.00 a.m.	Madawaska	8.00 a.m.	8.00 p.m.
4.50	4.50	Whitney	7.10	7.10
5.20	5.20	Rock Lake	6.40	6.40
5.40	5.40	Two Rivers	6.20	6.20
6.00 p.m.	6.00 a.m.	Algonquin Park	6.00 a.m.	6.00 p.m.

This service terminated September 7.

TRIPS MADE BY MOTOR BUS FROM SEPTEMBER 9 TO OCTOBER 31

Date	From	To
Sept. 12	Madawaska	Algonquin Park and return
Sept. 14	Madawaska	Algonquin Park and return
Sept. 16	Madawaska	Algonquin Park and return
Sept. 19	Madawaska	Algonquin Park and return
Sept. 21	Madawaska	Algonquin Park and return
Sept. 28	Madawaska	Algonquin Park and return
Oct. 10	Madawaska	Mileage 147·3 Renfrew Sub. and return
Oct. 16	Madawaska	Algonquin Park and return
Oct. 22	Madawaska	Algonquin Park and return

No trips made between October 22nd and 31st.

It will be noted from the above that it is possible for both passengers and effects to cross the trestle between Two Rivers and Algonquin Park stations during the summer months.

Train Service, Algonquin Park Subdivision

Mixed train, Tuesday and Friday, westbound:

Leave Algonquin Park 9.00 a.m., arrive Ravensworth 11.00 a.m.

Mixed train, Monday and Thursday, eastbound:

Arrive Ravensworth 4.20 p.m., arrive Algonquin Park 6.20 p.m.

Train Service, Renfrew Subdivision

Passenger train, Friday only, westbound:

Leave Madawaska 8.40 p.m., arrive Two Rivers 9.55 p.m.

Mixed train, Friday only, westbound:

Leave Madawaska 7.00 a.m., arrive Two Rivers 10.30 a.m.

Mixed train, Wednesday only, westbound:

Leave Madawaska 8.15 a.m., arrive Two Rivers 10.45 a.m.

Passenger train, Saturday only, eastbound:

Leave Two Rivers 6.25 a.m., arrive Madawaska 7.45 a.m.

Passenger train, Wednesday only, eastbound:

Leave Two Rivers 11.40 a.m., arrive Madawaska 12.55 p.m.

Mixed train, Friday only, eastbound:

Leave Two Rivers, 11.50 a.m., arrive Madawaska 3.00 p.m.

Mixed train, Monday only, eastbound:

Leave Two Rivers 2.30 p.m., arrive Madawaska 5.30 p.m.

The railway operating revenues for the year 1931 were $43,817; for the year ending December 31, 1933, they were $20,302; and for the year ending December 31, 1934, they were $37,478. The railway company's operating expenses (out of pocket only) for the same period were as follows: For the year 1931, $78,439; for the year ending December 31, 1933, $39,984; and for the year ending December 31, 1934, $42,054. The loss for this three-year period amounted to $24,622 in 1931; $19,682 in 1933; and $4,576 in 1934.

The portion of railway line covered by this application lies almost entirely within the borders of Algonquin Park. The Province of Ontario, represented by H. C. Draper, state that they have a very substantial investment in the park, and so long as the present operation continues they will receive a substantial revenue. At present their annual revenue is estimated to be $250,000. They had, at the time of hearing, 700 men employed along the line. Mr. Draper states there are 42 timber leases and 208 lease-holders and licensees in the park; that there are a great many camps with accommodation for guests rang-

ing in number from 75 to 200 per camp; that there are numerous people who have summer residences served by the railway; and that if the application were allowed summer activities of any kind within the park would be very seriously handicapped and in some cases completely stopped.

Representatives of the Algonquin Corporation, the Sterling Lumber Company, and the P. A. Duff Company, Limited, holders of large timber leases in Proudfoot, Peck, Butt, McCraney, and Hunter townships also appeared. The evidence of these parties is to the effect that they have substantial investments in the territory; that during the years 1930-35 their operations were considerably curtailed because of the depression; and that when conditions improve their shipments will increase very substantially, but if the railway is allowed to abandon the Algonquin Subdivision between Mile 35·3 and Mile 70·5 it will be impossible to operate the lumbering business in the territory at all, and their investments will be almost a total loss.

The road map of the province of Ontario does not indicate any roads closer to the abandoned line than the north and south roads at each end of the abandonment. However, the Department of Northern Development is constructing a road between Whitney and Dwight. This road parallels a portion of the line to be abandoned from Two Rivers to Algonquin Park. From Two Rivers to Algonquin Park the highway is within one mile of the railway on the north side. It parallels the railway on the south side for four miles west from Algonquin Park and then the two lines separate sharply. Canoe Lake Station is four miles from the new road to the south. Brule Lake would be twelve miles from the new road and about fourteen miles from the road at Ravensworth. There are no adjacent roads to the north. McCraney has no road connection closer than Ravensworth, a distance of seven miles. The distance to the new road to the south would be fourteen miles.

There are no other transportation facilities other than rail being operated in the area served by this line. The highway which is being constructed by the province is the only road which touches the area and could be used only by a very small percentage of those interested, to reach places where they are presently located in the park. The lumber industry would be almost, if not entirely, cut off from transportation facilities of any kind, and, while it is a fact that during the years for which the earnings are filed substantial losses are shown, there is a possibility, with business conditions improving, that a very substantial increase in shipments of lumber will take place.

Included in the operating loss shown by the railway is a yearly corporation tax paid directly to the province of Ontario, amounting to $2,470. The suggestion was made by the railway company at the hearing, that as the province is financially interested in the continued operation of the line the province might be disposed to refund this tax in some way to the company. Counsel for the province has since advised the Board that, upon the railway company withdrawing its application to abandon, the province is willing to abate the corporation tax from and after the 1st day of January, 1936, for a period of one year. Counsel for the railway agrees to withdraw the application for abandonment on the understanding that the province waives the taxes on this line for the year 1936, and will thereafter consider on a yearly basis a similar abatement.

In these circumstances, no direction or order of the Board at the present time seems necessary.

February 13, 1936.

The Assistant Chief Commissioner and Commissioner Stone concurred.

ORDER No. 52751

In the matter of the application of the Buffalo and Fort Erie Public Bridge Authority, hereinafter called the "Applicant," for approval of Tariff C.R.C. A-6, covering tolls to be charged for the use of the Peace Bridge between Fort Erie, Ontario, and Buffalo, New York.

File No. 36795.1

FRIDAY, the 7th day of February, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant's said Tariff C.R.C. No. A-6 (cancelling Tariff C.R.C. No. A-5), covering tolls to be charged for the use of the Peace Bridge between Fort Erie, in the province of Ontario, and Buffalo, in the state of New York, on file with the Board under file No. 36795.1, be, and it is hereby, approved.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52770

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 11th day of February, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 986, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion, both tariff and normal, to be reported as shown below.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportions of the normal tolls, for the purpose of reimbursement, under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 986, approved herein, are as follows, namely:—

Item No.		Cents per 100 pounds Tariff	Normal
5		22.9	28.6
10		20	25
15		10.6	12.3
20	From Bridgetown, N.S.	12	15
	From Berwick, N.S.	13	16
25		22.1	27.5
30		6.1	7.4

Item No.		Cents per 100 pounds Tariff	Normal
	To Yarmouth, N.S.	12	15
	" Hebron, N.S.	12	14.5
35	" Meteghan, N.S	12	14.5
	" Weymouth, N.S.	12	14.5
	" Annapolis, N.S.	12	14.5
	" Tupperville, N.S.	13	16
	" Bridgetown, N.S.	12	15
40	" Middleton, N.S.	14.2	17.8
	" Berwick, N.S.	18.2	22.7
	" Weston, N.S.	24.3	29.3
	" Kingsport, N.S.	24.3	29.3
	" Windsor, N.S.	24.3	29.3
45	" South Maitland, N.S.	24.2	29.7
	" Halifax, N.S.	22.9	28.7
	" Truro, N.S.	22.4	28
50		13.6	17
	To Yarmouth, N.S.	16.1	20.1
	" Imbertville, N.S.	15.5	18.5
55	" Bear River, N.S.	15.5	18.5
	" Annapolis, N.S.	15.5	18.5
	" Bridgetown, N.S.	16.3	20.4
	" Paradise, N.S.	5.5	6.5
60	" Windsor, N.S.	7.6	8.7
	" Kingsport, N.S.	7.4	9.1
	" Weston, N.S.	7.4	9.2
65	" Truro, N.S.	15.2	18.9
	" Halifax, N.S.	18.9	23.7
70	" Truro, N.S.	25.9	32.4
	" Halifax, N.S.	30.5	38.1
75	" Truro, N.S.	18.2	22.7
	" Halifax, N.S.	22.9	28.7
80		6.9	8.2
85		9.2	11.5
90		17.4	21.8
95		9.5	11.9
100		8	10
105	Carload	16	20
	Less carload	25.1	31.3
110		Prop. of 4th-Cl. rate	Prop. of 4th-Cl. rate
115		8.3	10.3
120		10.2	12.7
125	To Truro, N.S.	11.1	13.9
	" Halifax, N.S.	12	15
130		9.9	12.2
	To Yarmouth, N.S.	6.1	7.4
135	" Kentville, N.S.	13.6	16.7
	" Hantsport, N.S.	13.6	16.7
	" Windsor, N.S.	13.6	16.7
145		27.1	33.8

Item No.	Index No.	A Tariff	A Normal	B Tariff	B Normal	C Tariff	C Normal
	10	13.8	17.3	8.5	10.6	7.4	9.3
	45	12.8	15.3	8.3	10.3	7.4	9.3
	55	13.7	16.7	8.4	10.1	7.8	9.5
	60	13.7	16.7	9.1	10.8	9	11
155	65	13.7	16.7	9.1	10.8	9	11
	70	13.7	16.7	9.4	11.2	9.3	11.4
	75	13.7	16.7	9.4	11.2	9.3	11.4
	80	13.7	16.7	9.4	11.2	9.3	11.4
	95	13.7	16.7	9.4	11.2	9.3	11.4
	100	13.7	16.7	9.7	11.6	9.6	11.8
	110	13.7	16.7	9.7	11.6	9.6	11.8
	155	14	16	10.1	11.7	9.9	11.2
	170	13.7	16.7	10	11.9	9.6	11.8
	185	13.7	16.7	10	11.9	9.6	11.8
160	200	13.7	16.7	9.7	11.6	10.3	12.6
	205	13.7	16.7	9.7	11.6	10.3	12.6
	220	13.7	16.7	9.4	11.2	9.3	11.4
	230	13.7	16.7	9.4	11.2	9.3	11.4
	240	13.7	16.7	9.1	10.8	9.3	11.4

Item No.	Index No.	A Tariff	A Normal	B Tariff	B Normal	C Tariff	C Normal
	245	13.7	16.7	9.1	10.8	9.3	11.4
	255	13.7	16.7	9.1	10.8	9.3	11.4
	265	13.7	16.7	8.7	10.4	9	11
	275	13.7	16.7	8.7	10.4	9	11
165	285	13.7	16.7	8.4	10.1	8.7	10.7
	290	13.7	16.7	8.4	10.1	8.7	10.7
	295	12.2	15.3	7.7	9.7	7.2	9
	300	14	16	10.1	11.7	9.9	11.2
	320	14	16	10.1	11.7	9.9	11.2
	325	14	16	10.5	12.1	10.6	12
	330	14	16	10.5	12.1	10.9	12.3
	335	14	16	10.5	12.1	10.9	12.3
	340	14	16	10.5	12.1	10.6	12
170	345	14	16	11.1	12.8	10.6	12
	360	13	16	10.8	13.5	10.4	12.3
	370	13	16	10.8	13.5	10.4	12.3
	380	13	16	11.1	13.8	10.4	12.3
	440	13	16	11.1	13.8	10.4	12.3
	445	13	16	11.1	13.8	10.7	12.7
	455	13	16	11.1	13.8	10.7	12.7
	465	13	16	12	15	10.7	12.7
	390	14	17	11.2	13.4	10.3	12.5
	400	14	17	11.2	13.4	10.6	12.9
	410	14	17	11.2	13.4	10.6	12.9
175	415	14.5	18	11.5	14	10.8	13.5
	425	14.5	18	11.5	14	10.8	13.5
	435	14.5	18	11.5	14	10.8	13.5
	485	13	16	11.1	13.8	10.4	12.3
	490	13	16	11.1	13.8	10.4	12.3
	495	13	16	11.1	13.8	10.4	12.3
	500	9.6	12	8.3	10.4	7.2	8.9
	505	9.3	11.3	8.3	10.2	7.3	8.7
	510	9.3	11.3	8.3	10.2	7.3	8.7
	515	9.3	11.3	8.1	9.9	7.1	8.4
180	520	7.9	9.6	7.2	8.8	5.7	6.8
	530	7.3	8.8	6.5	8	5.6	7
	545	8	9.5	7.3	8.7	5.6	6.9
	550	8.3	9.8	7.5	9	6.5	8
	555	8.3	9.8	7.5	9	6.5	8
	565	5.5	6.5	6.3	7.3	5.4	6
	570	5.5	6.5	7.3	8.3	6.8	7.8
	575	5.5	6.5	7.3	8.3	6.8	7.8
	585	5.5	6.5	6.8	7.8	6	7
	590	5.5	6.5	6.8	7.8	6	7
185	595	5.5	6.5	6.8	7.8	6	7
	605	5.5	6.5	6.8	7.8	6	7
	615	5.5	6.5	6.8	7.8	6	7
	655	5.5	6.5	6.8	7.8	6	7
	665	5.5	6.5	6.8	7.8	6	7
	670	5.5	6.5	6.8	7.8	6	7
	675	5.5	6.5	6.8	7.8	6	7
	685	5.5	6.5	6.8	7.8	6	7
	700	5.5	6.5	6.8	7.8	6	7
	705	5.5	6.5	6.8	7.8	6	7
190	710	5.5	6.5	6.8	7.8	6	7
	715	5.5	6.5	6.8	7.8	6	7
	725	5.5	6.5	6.8	7.8	6	7
	730	5.5	6.5	7.3	8.3	6.8	7.8
	740	5.5	6.5	7.3	8.3	6.8	7.8
	750	5.5	6.5	7.3	8.3	6.8	7.8
	755	5.5	6.5	7.3	8.3	6.8	7.8
195	760	5.5	6.5	7.3	8.3	6.8	7.8
	765	5.5	6.5	7.3	8.3	6.8	7.8
	770	5.5	6.5	6.3	7.3	5.8	6.8

Item No.	A Tariff	A Normal	B Tariff	B Normal	C Tariff	C Normal	D Tariff	D Normal
205	7.5	9	9.2	11.5	8.8	10.8	8.3	10.3
210	7.5	9	9.2	11.5	8.8	10.8	8.3	10.3
215	7.5	9	9.2	11.5	8.8	10.8	8.3	10.3
220	7.5	9	9.2	11.5	8.8	10.8	8.3	10.3
225	7.5	9	9.2	11.5	8.8	10.8	8.3	10.3
230	9.5	11.5	11.2	14	10.9	13.1	10.4	12.6
235	9.5	11.5	11.2	14	10.9	13.1	10.4	12.6
240	17.5	21.5	19.2	24	19.8	22.2	19.3	21.7
245	5.5	6.5	7.2	9	7.2	7.8	6.7	7.3

		Cents per package					
		Barrels		Tierces		Puncheons	
		Tariff	Normal	Tariff	Normal	Tariff	Normal
250	A	29	36	45.5	56.5	70	87
	B	37	46	56	70	94.8	118.3
	C	35.2	44	53.4	66.8	88.5	110.5
	D	33	41	50.8	63.3	82.3	102.8

		Cents per ton of 2,000 lbs.	
		Tariff	Normal
255	A	64	80
	B	99.6	124.5
	C	90.8	113.3
	D	82	102.5

		Cents per package	
		Tariff	Normal
260	A	28.5	33.5
	B	35.6	44.5
	C	33.8	42.3
	D	32	40
270	A	15	18
	B	17.8	22.3
	C	17	21
	D	16.5	20.5

		Cents per thousand	
		Tariff	Normal
270	A	18	22
	B	19.2	24
	C	18.8	23.3
	D	18.3	22.8

		Cents per barrel	
		Tariff	Normal
275	A	28.5	33.5
	B	33.8	42.3
	C	33.8	42.3
	D	32	40

	Cents per 100 pounds	
	Tariff	Normal
280	5	6
285	7.5	9

	Cents per keg	
	Tariff	Normal
290	7.5	9

H. GUTHRIE,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR DECEMBER, 1935

Railway accidents	171,	with 15 persons killed,	156 injured.
Railway accidents at highway crossings	28,	with 10 persons killed,	35 injured.
	199	25	191

	Killed	Injured
Passengers	—	20
Employees	4	124
Others	21	47
	25	191

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents

Prince Edward Island

1 Auto Truck—Ran into side of engine. Licence P.E.I. T-383.

New Brunswick

1 Automobile—Auto driver failed to see or hear train. N.B. licence N-2040.
1 Pedestrian.

Nova Scotia

1 Auto Truck—Driver failed to see or hear train. Licence N.S. C-10-694.

Quebec

2 Automobile—Auto driver failed to stop for crossing. Que. licences 72077, 78249.
1 Automobile—Auto driver failed to see or hear train. Que. licence 30681.
1 Pedestrian—Passed through lowered gates, struck by train.

Ontario

4 Automobile—Ran into side of train. Licences, Ont. H-54, D. Barker, 109 Flora St., St. Thomas; Ont. BU-763, Wm. Huenemorder, Hanover; Ont. V-2044, A. McCrea, Maidstone; Ont. MT-355, H. J. Cabell, Schomberg, Ont.
2 Automobile—Driver failed to see or hear train. Licence, Ont. NL-439, P. Bartlett (no address given); Ont. CX-234, V. Bala, Welland.
2 Automobile—Driver attempted to beat train over crossing. Licence, Ont. BW-544 (name and address not given); Ont. LC-38, A. Bontinen, 359 Ontario St., Sudbury.
1 Automobile—Stalled on crossing. Licence JV-566, R. Burke, Pakenham.
1 Automobile—Auto ran through lowered gates, struck by train. Licence Ont. OA-540, F. H. Murray (no address).
1 Automobile—Licence Ont. CD-978.
4 Auto Truck—Failed to see or hear train. Licences, Ont. 38664-C, S. McCullough, Ont. 46607-C, M. Tindell, Claremont, Ont.; Ont. 63584-C, J. Edwards, Brantford; Ont. 40016-C, L. Dietrich, 58 Queen St., Waterloo.
1 Auto Truck—Ran into side of train. Licence Ont. 41208-C, J. W. Hodgins, Lucan, Ont.
1 Pedestrian—Failed to observe train.
2 Pedestrian.

British Columbia

1 Automobile—Driver failed to see or hear train. Licence B.C. 83-842.

Of the twenty-eight accidents at highway crossings, six occurred at protected crossings and twenty-two at unprotected crossings. Twelve of the accidents occurred during the daylight hours and sixteen at night.

Ottawa, February 14, 1936.

MAY 16 1936

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXV Ottawa, March 15, 1936 No. 26

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In the matter of the joint application of the Canadian National and Canadian Pacific Railway Companies for an Order granting leave to abandon a section of the Canadian National Railways' line between Iberville and Farnham, in the Province of Quebec, and for approval of running rights to the Canadian National Railways over the line of the Canadian Pacific Railway Company, as set out in agreement dated August 1st, 1935.

(File No. 39310·28)

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER:

The present application is really a joint application by the Canadian National Railways and the Canadian Pacific Railway Company in which the former company seeks the approval of the Board under section 165 A of the Railway Act, and section 2, subsection 3, of the Canadian National—Canadian Pacific Act 1933, to abandon the operation of that portion of its line of railway commencing at Stanstead, Shefford and Chambly Junction on the Versailles Subdivision, thence easterly a distance of 10·87 miles to Farnham, together with certain trackage in the Farnham Yard, being a total mileage of 11·27 miles.

The Canadian Pacific Railway Company has joined in this application in pursuance of an agreement entered into by both of the said companies pursuant to the provisions of the Canadian National—Canadian Pacific Act 1933, which directs the said companies to agree upon such co-operative measures, plans and agreements as are fair and reasonable and best adapted to effect economies and provide for more remunerative operation. Approval of this agreement by the Board is now sought by both companies.

The Canadian Pacific Railway Company operates a line from Iberville to Farnham which parallels in close proximity the line of the Canadian National Railway Company between the same points, and under the provisions of the above agreement the line heretofore operated between the above points by the Canadian National Railway Company is to be abandoned and both railway companies are in the future to operate their trains upon the line of the Canadian Pacific Railway Company between Iberville and Farnham under the terms more fully set out in the said agreement.

Upon the line of the Canadian National Railway Company in respect of which abandonment is now sought, there are at present three stations between Iberville and Farnham which are known as Mount Johnson, Versailles and Menardville or Ste Brigide, and directly north of them upon the same highways, respectively, are three stations of the Canadian Pacific Railway Company known as St. Gregoire, Versailles and Ste Brigide. The distance between these stations upon the respective railways is very slight. Between Mount Johnson on the Canadian National Railway and St. Gregoire on the Canadian Pacific Railway the distance is $\frac{5}{8}$ mile. Between Versailles on the Canadian National Railway and Versailles on the Canadian Pacific Railway the distance is $\frac{1}{2}$ mile; and between Menardville on the Canadian National Railway and Ste. Brigide on the Canadian Pacific Railway the distance is $\frac{3}{8}$ mile. The practical result of granting the application for abandonment will be to remove the present Canadian National Railway stations to the north a distance of $\frac{5}{8}$, $\frac{1}{2}$, and $\frac{3}{8}$ mile, respectively. The only inconvenience to the public as a result of such a change would be a slight extra amount of travel for those on the south side of the present Canadian National Railway.

The freight, passenger and express business of the Canadian National Railway Company in respect of the above mentioned stations has been exceedingly light. The aggregate receipts from all of these stations for a number of years back have only averaged about $1,200.00 per annum. This has been entirely for inbound traffic. The receipts for outbound traffic have been negligible, or non existent. None of the stations upon either line of railway has been in charge of an agent. Caretakers have done all the work necessary, and from any indications at the present time caretakers will be able to attend to all the traffic in the future over both lines.

The above mentioned agreement provides for joint operation and running rights for both railways over the line of the Canadian Pacific Railway Company when the agreement has been finally ratified, and the abandonment of the Canadian National line approved. The residents in the neighborhood will enjoy just as good train service, both freight and passenger, as they enjoy at the present time. The inconvenience to the community will be exceedingly slight while the saving to the Railways will be considerable.

Complaint was made at the hearing by some of the residents of the district that at the present time there were not adequate facilitites at two of the stations on the line of the Canadian Pacific Railway; that there were not sufficient sidings or platforms for the shipping of milk and other commodities at these stations. If this complaint is well founded, the railways should remedy the matter without unreasonable delay. It will be open to the interested parties to apply to the Board in regard to improved facilities at these stations should it become necessary to do so at a future date.

I have come to the conclusion that the application to abandon the Canadian National line between the points above mentioned should be granted, and, also, that the approval of the Board should be given to the agreement mentioned pursuant to the provisions of the Canadian National-Canadian Pacific Act 1933.

February 15, 1936.

The Assistant Chief Commissioner concurred.

In the matter of the joint application of the Canadian National and Canadian Pacific Railway Companies for an Order granting leave to abandon a section of the Canadian National Railways' line between Iberville and Farnham, in the Province of Quebec, and for approval of running rights to the Canadian National Railways over the line of the Canadian Pacific Railway Company, as set out in Agreement dated August 1st, 1935.

File No. 39310·28

JUDGMENT

GARCEAU, Deputy Chief Commissioner:

This is a joint application by the Canadian National Railways and the Canadian Pacific Railway Company under section 16 of the Canadian National-Canadian Pacific Act, chapter 33, 23-24 Geo. V.

The Canadian National Railways are to abandon their line from Iberville to Farnham and operate their trains on the Canadian Pacific Railway line, in accordance with the terms of the agreement filed with the Board.

Subsection 1 of section 16 reads as follows:—

> "The National Company, for and on behalf of itself and/or any or all other of the companies and other elements of which National Railways as defined by this Act is composed, and the Pacific Company, for and on behalf of itself and/or any or all other of the companies and other elements, of which Pacific Railways as defined by this Act is composed, are, for the purposes of effecting economies, and providing for more remunerative operation, directed to attempt forthwith to agree and continuously to endeavour to agree, and they respectively are, for and on behalf as aforesaid, authorized to agree, upon such co-operative measures, plans and arrangements as are fair and reasonable and best adapted (with due regard to equitable distribution of burden and advantage as between them) to effect such purposes. They are further directed that whenever they shall so agree they shall endeavour to provide through negotiations with the representatives of the employees affected, as part of such measure, plan or arrangement or otherwise, for a fair and reasonable apportionment as between the employees of National Railways and Pacific Railways, respectively, of such employment as may be incident to the operation of such measure, plan or arrangement."

The agreement contains no proviso indicating that the railways have complied with the last part of the legal disposition above quoted, viz.:—

> "They are further directed that whenever they shall so agree they shall endeavour to provide through negotiations with the representatives of the employees affected, as part of such measure, plan or arrangement or otherwise, for a fair and reasonable apportionment as between the employees of National Railways and Pacific Railways, respectively, of such employment as may be incident to the operation of such measure, plan or arrangement."

About eleven employees of the Canadian National Railways, but none of the Canadian Pacific Railway Company's employees, will be affected by this measure.

The evidence shows that "the men will exercise whatever seniority they may have. If they can be absorbed, they will be, but if they cannot, they will not" (Mr. Rand, p. 3).

This is not the "fair and reasonable apportionment of employment between the employees of both railways" as mentioned in the Statute.

The representatives of the employees, though considered interested parties by the Statute, have not been advised of the application by the railways: to obviate,

I would grant the application but the Order not to come into force until the railways have filed satisfactory evidence that they have complied with the statutory provisions concerning employees.

February 15, 1936.

Re requête conjointe des compagnies des chemins de fer Nationaux du Canada et Pacifique Canadien, demandant qu'une ordonnance soit rendue les autorisant à discontinuer l'exploitation de la partie de la ligne de la compagnie des chemins de fer Nationaux du Canada qui s'étend d'Iberville à Farnham, dans la province de Québec, et approuvant les droits de circulation accordés à la compagnie des chemins de fer Nationaux du Canada, sur la ligne de la compagnie du chemin de fer Pacifique Canadien, aux termes du contrat daté le 1er août 1935.

Dossier No. 39310.28

JUGEMENT

GUTHRIE, Commissaire en chef:

La présente requête constitue en réalité une requête conjointe des chemins de fer Nationaux du Canada et de la compagnie du chemin de fer Pacifique-Canadien dans laquelle ceux-là demandent l'approbation de la Commission en vertu de l'article 165-A de la Loi des chemins de fer, et de l'article 2, paragraphe 3, de la Loi de 1933 relative au Canadien National et au Pacifique Canadien, pour discontinuer l'exploitation de cette partie de leur réseau qui commence à la jonction de Stanstead, Shefford et Chambly, sur la subdivision de Versailles, et qui va vers l'est jusqu'à Farnham, soit une distance de 10.87 milles, et aussi de certaines voies dans la cour de Farnham, soit un parcours total de 11.27 milles.

La compagnie du chemin de fer Pacifique Canadien a pris part à cette requête par suite d'une convention intervenue entre les deux dites compagnies conformément aux dispositions de la Loi de 1933 relative au Canadien National et au Pacifique Canadien, laquelle enjoint auxdites compagnies de s'entendre sur tels mesures de co-opération, projets et conventions qui sont justes et raisonnables et des mieux appropriées à effectuer des économies et pourvoir à une exploitation plus rémunératrice.

L'approbation de cette convention par la Commission est maintenant demandée par les deux compagnies.

La compagnie du chemin de fer Pacifique Canadien exploite une ligne entre Iberville et Farnham qui est, à une distance très rapprochée, parallèle à la ligne de la compagnie des chemins de fer Nationaux du Canada entre les mêmes endroits, et selon les dispositions de la convention ci-dessus, la ligne jusqu'à présent exploitée entre les endroits ci-dessus par la compagnie des chemins de fer Nationaux du Canada doit être abandonnée, et les deux compagnies de chemins de fer, doivent, à l'avenir, faire circuler leurs trains sur la ligne de la compagnie du chemin de fer Pacifique-Canadien entre Iberville et Farnham, conformément aux termes exposés plus en détail dans la dite convention.

Sur la ligne de la compagnie de chemins de fer Nationaux du Canada, dont on demande actuellement l'abandon, il y a présentement trois stations entre Iberville et Farnham, connues sous les noms de Mont Johnson, Versailles et Ménardville ou Ste-Brigide, et il y a vis-à-vis celles-ci, au nord, et sur les mêmes routes respectivement, trois stations de la compagnie du chemin de fer Pacifique Canadien connues sous les noms de St-Grégoire, Versailles et Ste-Brigide. La distance entre ces stations sur les deux chemins de fer respectivement est très faible. Entre Mont Johnson sur le Canadien National et St-Grégoire sur le Pacifique Canadien, la distance est de $\frac{5}{8}$ de mille. Entre Versailles sur le Canadien National et Versailles sur le Pacifique Canadien, la distance est de $\frac{1}{2}$ mille; et entre Ménardville sur le Canadien National et Ste-Brigide sur le Pacifique Canadien, la distance est de $\frac{3}{8}$ de mille. Si la présente requête est accordée, ceci va avoir pour résultat pratique de déplacer les stations actuelles des chemins de fer Nationaux du Canada vers le nord sur des distances de $\frac{5}{8}$, $\frac{1}{2}$ et $\frac{3}{8}$ de mille respectivement. Le seul inconvénient pour le public comme résultat d'un tel changement consisterait à faire un parcours un peu plus long dans le cas de ceux qui demeurent du côté sud de la voie actuelle du Canadien National.

Le trafic des marchandises, des voyageurs et des messageries sur la ligne de la compagnie des chemins de fer Nationaux du Canada, pour ce qui concerne les stations ci-dessus mentionnées a été de très peu d'importance. L'ensemble des recettes de toutes ces stations depuis un certain nombre d'années a été, en moyenne, d'environ $1,200 par année. Ces chiffres se rapportent entièrement au trafic à destination de ces stations. Les recettes pour le trafic en provenance de ces stations ont été de quantité négligeable ou nulles. Aucune des stations sur les deux lignes de chemins de fer n'a été sous les soins d'un agent. Des gardiens ont fait tout le travail nécessaire, et d'après les indications, à l'heure actuelle, des gardiens seront, à l'avenir, en mesure de prendre charge de tout le trafic sur les deux lignes.

La convention ci-dessus mentionnée pourvoit à l'exploitation conjointe et aux droits de circulation pour les deux chemins de fer sur la ligne de la compagnie du chemin de fer Pacifique Canadien lorsque la convention aura été définitivement ratifiée, et que l'abandon de la ligne du Canadien National aura été approuvé. Les résidents dans le voisinage auront un service de trains de marchandises et de voyageurs aussi efficace que celui qu'ils ont présentement. Les inconvénients pour la population seront de très peu d'importance tandis que les économies pour les chemins de fer seront considérables.

Lors de l'audition quelques résidents du district se sont plaints qu'actuellement il n'y avait pas de facilités suffisantes à deux des stations sur la ligne du chemin de fer Pacifique Canadien; qu'il n'y avait pas de voies d'évitement suffisantes ou de plate-formes pour l'expédition du lait et d'autres produits à ces stations. Si cette plainte est bien fondée, les chemins de fer devraient rémédier à la situation dans un délai raisonnable. Il sera loisible aux parties intéressées de s'adresser à la Commission concernant l'amélioration des facilités à ces stations, s'il devient plus tard nécessaire d'agir ainsi.

J'en suis venu à la conclusion que la requête pour l'abandon de la ligne du Canadien National entre les endroits ci-dessus mentionnés, devrait être accordée, et aussi que l'approbation de la Commission devrait être accordée à la convention déjà mentionnée et conforme aux dispositions de la Loi de 1933 relative au Canadien National et au Pacifique Canadien.

Le 15 février 1936.

Le Commissaire en chef adjoint s'est rallié au jugement ci-dessus.

Requête conjointe des compagnies des chemins de fer Nationaux du Canada et Pacifique Canadien, demandant qu'une ordonnance soit rendue les autorisant à discontinuer l'exploitation de la partie de la ligne de la compagnie des chemins de fer Nationaux du Canada qui s'étend d'Iberville à Farnham, dans la province de Québec, et approuvant les droits de circulation accordés à la compagnie des chemins de fer Nationaux du Canada sur la ligne de la compagnie du chemin de fer Pacifique Canadien aux termes du contrat daté le 1er août 1935.

JUGEMENT

GARCEAU, Commissaire en chef suppléant:

Il s'agit d'une requête conjointe de la compagnie des chemins de fer Nationaux du Canada et de la compagnie du chemin de fer Pacifique Canadien en vertu de l'article 16 de la Loi concernant les chemins de fer Nationaux du Canada et Pacifique Canadien, chap. 33, 23-24 Geo. V.

La compagnie des chemins de fer Nationaux du Canada veut discontinuer l'exploitation de sa ligne entre Iberville et Farnham et faire circuler ses trains sur la voie du chemin de fer Pacifique-Canadien, selon les termes d'un contrat produit au dossier de la Commission.

Le sous-article 1 de l'article 16 se lit comme suit:

> "Aux fins de réaliser des économies et d'assurer un service plus rémunérateur, la présente loi prescrit à la Compagnie du National, pour son propre compte et de sa propre part et/ou pour le compte ou de la part de l'une de toutes les autres compagnies et de l'un ou de tous les autres éléments dont se composent les chemins de fer Nationaux tels que définis en la présente loi, ainsi qu'à la Compagnie du Pacifique, pour son propre compte et de sa propre part et/ou pour le compte ou de la part de l'une ou de toutes les autres compagnies et de l'un ou de tous les autres éléments dont se composent les Chemins de fer du Pacifique tels que définis en la présente loi, de tâcher sans délai de s'entendre et de constamment s'efforcer de s'entendre, et elle les autorise respectivement, tant pour leur propre compte et de leur propre part que pour le compte et de la part des autres compagnies ou éléments susdits, à s'entendre pour adopter les mesures, plans et arrangements de coopération justes et raisonnables et les plus propres (eu égard à la répartition équitable des charges et des avantages entre elles) à atteindre ces fins. Elle leur prescrit en outre de tâcher d'inclure, chaque fois qu'elles en viendront à une entente au moyen de pourparlers avec les représentants des employés affectés, une disposition faisant partie de leurs mesures, plans ou arrangements ou autres accords, et pourvoyant à la répartition équitable et raisonnable, entre les employés des Chemins de fer Nationaux et des Chemins de fer du Pacifique, respectivement, des emplois qui peuvent se rapporter à la mise en œuvre de ces mesures, plans ou arrangements."

Le contrat ne contient aucune clause qui démontrerait que les chemins de fer se sont conformés aux exigences de la dernière partie du statut cité plus haut, savoir:

> "Elle leur prescrit en outre de tâcher d'inclure chaque fois qu'elles en viendront à une entente au moyen de pourparlers avec les représentants des employés affectés, une disposition faisant partie de leurs me-

sures, plans ou arrangements ou autres accords, et pourvoyant à la répartition équitable et raisonnable, entre les employés des chemins de fer Nationaux et des chemins de fer du Pacifique, respectivement, des emplois qui peuvent se rapporter à la mise en œuvre de ces mesures, plans ou arrangements."

Environ onze employés des chemins de fer Nationaux du Canada seront affectés par cette entente, mais nul du Pacifique-Canadien.

La preuve a démontré que "les employés se prévaudront de leur droit d'ancienneté. S'ils peuvent être absorbés, ils le seront; s'ils ne peuvent pas l'être, ils ne le seront pas." (M. Rand, p. 3.)

Ceci ne semble pas être la "répartition équitable et raisonnable (des emplois) entre les employés des Chemins de fer Nationaux et des Chemins de fer du Pacifique, respectivement," tel que mentionné au Statut.

Bien que considérés par la Loi comme partie intéressée, les représentants des employés n'ont pas été notifiés de la requête du chemin de fer.

Pour rémédier à cela, j'accorderais la requête mais à la condition que l'ordonnance ne prenne force qu'après que les compagnies des chemins de fer auront produit une preuve satisfaisante qu'ils se sont conformés aux exigences de la Loi pour ce qui concerne les employés.

Le 15 février 1936.

ORDER No. 52780

In the matter of the joint application of the Canadian National Railway Company and the Canadian Pacific Railway Company, under Sections 165A and 252 of the Railway Act, for (a) leave to abandon the operation of that portion of the Canadian National Railway commencing at Stanstead, Shefford and Chambly Junction, on the Versailles Subdivision, thence easterly a distance of 10·87 miles, together with certain trackage in its Farnham Yard, all in the Province of Quebec, being a total mileage of 11·27 miles; and (b) permitting the Canadian National Railway Company to connect its tracks with the tracks of the Canadian Pacific Railway Company at the points shown on the plan dated Montreal, September 14, 1935, on file with the Board under file No. 39310.28.

FRIDAY, the 14th day of February, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon hearing the application at the sittings of the Board held at St. John's, Quebec, February 4, 1936, in the presence of counsel for and representatives of the Canadian National and Canadian Pacific Railway Companies, the town of Iberville, and interested municipalities, and what was alleged; and upon reading the further written submissions filed on behalf of the Order of Railroad Telegraphers, the parish of Ste. Brigide, the town of Iberville, county of Iberville, the parish of St. Gregoire le Grand, and the Granby Board of Trade,—

It is ordered:

1. That the abandonment of operation of that portion of the Canadian National Railway commencing at Stanstead, Shefford and Chambly Junction, on the Versailles Subdivision, thence easterly a distance of 10·87 miles, together with certain trackage in its Farnham Yard, all in the province of Quebec, being a total mileage of 11·27 miles, be, and it is hereby, approved.

2. That the Canadian National Railway Company be, and it is hereby, granted leave to connect its tracks with the tracks of the Canadian Pacific Railway Company at the points shown on the said plan on file with the Board under file No. 39310.28.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52788

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Martime Freights Rates Act.

File No. 34822.12

WEDNESDAY, the 19th day of February, A.D. 1936.

S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

The Board orders:

1. That the toll published in item 240, third revised page 23 of Tariff C.R.C. No. E-4757, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said revised page 23 of Tariff C.R.C. No. E-4757, approved herein, is $1.50 per ton of 2,000 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52789

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 19th day of February, A.D. 1936.

S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 988, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 988, approved herein, are as follows:—

	Cents per 100 pounds
To Montreal, Que.	24
Sherbrooke, Que.	23

1½ cents per 100 pounds to be deducted account of water haul.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52790

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

WEDNESDAY, the 19th day of February, A.D. 1936.

S. J. MCLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 741, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 741, approved herein, are as follows:—

From	Cents per 100 pounds
St. Modeste, Que.	5
Gagnon Siding, Que.	4
Ste. Rose, Que.	4
Pinet Siding, Que.	4

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52797

In the matter of the application of the Cornwall-Northern New York International Bridge Corporation, hereinafter called the "Applicant," for approval of its Tariff C.R.C. No. 3, covering tolls to be charged in respect of the bridge of the Ottawa and New York Railway Company across the St. Lawrence River between the town of Cornwall, in the Province of Ontario, and the Town of Nyando, in the State of New York, on file with the Board under file No. 38514.1.

SATURDAY, the 22nd day of February, A.D. 1936.

S. J. MCLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant's Tariff C.R.C. No. 3, covering tolls to be charged in respect of the bridge of the Ottawa and New York Railway Company across the St. Lawrence river, between the town of Cornwall, in the province of Ontario, and the town of Nyando, in the state of New York, on file with the Board under file No. 38514.1, be, and it is hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52809

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act. File No. 34822.12

WEDNESDAY, the 26th day of February, A.D. 1936.

S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 31 to Tariff C.R.C. No. E-4322, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 31 to Tariff C.R.C. No. E-4322, approved herein, are as follows:—

Section 2	Cents per 100 pounds
From Group J To Mont Rolland, P.Q.	24

Section 3 From Index	To Saint John, N.B. Local	Furtherance
118 to 120	14	9
121 to 139	14	9½
140	14½	10½

Section 4 From Index	To St. George, N.B.	Fairville, N.B.
118 to 120	9	6½
121	9	7
122 to 128	9½	7
129	9	7
130 to 140	9½	7

To	Group	To	Group
Buckingham, P.Q.	A	Hull West, P.Q.	E
Cap de la Madeleine, P.Q.	B	Ottawa, Ont.	E
Trois Rivieres, P.Q.	B	Joliette, P.Q.	F
Cornwall, Ont.	C	Lachute, P.Q.	G
Grand Mere, P.Q.	D	Megantic, P.Q.	H
Mont Rolland, P.Q.	I	Sturgeon Falls, Ont.	N
Pont Rouge, P.Q.	J	Timiskaming, Ont.	O
Portneuf, P.Q.	K	Windsor Mills, P.Q.	P
St. Jerome, P.Q.	L	Merritton, Ont.	Q
Shawinigan Falls, P.Q.	M	Thorold, Ont.	Q
		St. George, N.B.	R
		Fairville, N.B.	S

Cents per 100 pounds

From Index	To A	B	C	D	E	F	G	H	I
151 to 154	18½	18½	17½	19	18½	17½	17½	13	17½
156	18½	18	17½	19	18½	17½	17	13	17½
158	18½	18	17½	19	18½	17½	17	13	17
160	18	18	17½	19	18½	17	17	13	17
163 to 166	18	18	17	19	18	17	17	13	17

From	To J	K	L	M	N	O	P	Q	R	S
151	19½	19½	17½	19	23½	23½	15½	28	3½	5½
152	19½	19½	17½	19	23½	23½	15½	28	—	5
153	19½	19½	17½	19	23½	23½	15½	28	2½	5
153-A	19½	19½	17½	19	23½	23½	15½	28	3½	5
154 to 156	19½	19	17	19	23½	23½	15½	28	3½	4½
158	19	19	17	19	23½	23	15½	28	4½	4½
160	19	19	17	19	23½	23	15½	27	4½	3½
163 to 165	19	19	17	19	24	23	15	27	4½	3½
166	19	19	17	18	24	23	15	27	5	3½

Section 5 Cents per 100 pounds—24½

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52804

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

THURSDAY, the 27th day of February, A.D. 1936.

S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

The Board orders: That the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3, namely:—

Supplement 11 to Tariff C.R.C. No. E-1231.
Supplement 59 to Tariff C.R.C. No. E-1244.
Supplement 21 to Tariff C.R.C. No. E-1256.
Supplement 12 to Tariff C.R.C. No. E-1261.
Supplement 31 to Tariff C.R.C. No. E-1504.
Supplement 26 to Tariff C.R.C. No. E-1689.
Supplement 22 to Tariff C.R.C. No. E-1737.
Supplement 24 to Tariff C.R.C. No. E-1737.
Supplement 31 to Tariff C.R.C. No. E-1829.
Supplement 20 to Tariff C.R.C. No. E-1906.
Supplement 22 to Tariff C.R.C. No. E-1911.
Supplement 23 to Tariff C.R.C. No. E-1911.
Supplement 24 to Tariff C.R.C. No. E-1911.
Supplement 4 to Tariff C.R.C. No. E-1920.
Supplement 15 to Tariff C.R.C. No. E-2047.
Supplement 14 to Tariff C.R.C. No. E-2248.
Supplement 4 to Tariff C.R.C. No. E-2261.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52813

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 28th day of February, A.D. 1936.

S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That the toll published in item 4-A of Supplement No. 5 to Tariff C.R.C. No. 879, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 5 to Tariff C.R.C. No. 879, approved herein, is $5\frac{1}{2}$ cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52814

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.15

FRIDAY, the 28th day of February, A.D. 1936.

S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That the toll published to Farnham, Quebec, in Supplement No. 4 to Tariff C.R.C. No. 194, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 4 to Tariff C.R.C. No. 194, approved herein, is $2.75 per ton of 2,000 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52812

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

FRIDAY, the 28th day of February, A.D. 1936.

S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That the tolls published in items 665 and 667, first revised page 39, of Tariff C.R.C. No. E-4757, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said first revised page 39 of Tariff C.R.C. No. E-4757, approved herein, are as follows:—

Item	Cents per 100 pounds	
	C.L.	L.C.L.
665	12	29
667	7½	

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52822

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

MONDAY, the 2nd day of March, A.D. 1936.

S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. E-4770, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. E-4770, approved herein, are as follows:—

From	Cents per 100 pounds
Bonny River, N.B.	4½
Lepreaux, N.B.	3
New River, N.B.	3
Pennfield, N.B.	4
Pocologan, N.B.	4

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52826

In the matter of the application of the Express Traffic Association of Canada, on behalf of express companies subject to the jurisdiction of the Board, for approval of proposed Supplement No. 19 to Tariff C.R.C. No. E.T. 694, covering amendments to the Regulations for the Transportation by Express of acids, inflammables, oxidizing substances, samples of explosives, etc., on file with the Board under file No. 1717.12.

MONDAY, the 2nd day of March, A.D. 1936.

S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon reading what is filed in support of the application and the consents of the Montreal and Toronto Boards of Trade and the Canadian Manufacturers' Association; and upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the said Supplement No. 19 to Tariff C.R.C. No. E.T. 694, covering amendments to the Regulations for the Transportation by Express of acids, inflammables, oxidizing substances, samples of explosives, etc., on file with the Board under file No. 1717.12, be, and it is hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

Re Demurrage Penalties assessed by the Canadian Car Demurrage Bureau under General Orders 201 and 349.

File 1700.338

The following tables present in summarized form the reports of the Canadian Car Demurrage Bureau covering car demurrage charges assessed for the year 1935.

NOTE.—First two days over free time $1 per day; three days or more, $5 per day.

EASTERN CANADA

1935	Tota cars handled	Number released within free time	Per cent	Number held over free time	per cent	Number held under 3 days over free time	Per cent	Number held 3 days or more over free time	Per cent
January	131,114	126,256	96·29	4,858	3·71	4,339	3·31	519	·40
February	138,321	133,639	96·62	4,682	3·38	4,142	2·99	540	·39
March	141,725	136,865	96·57	4,860	3·43	4,192	2·96	668	·47
April	134,079	129,823	96·83	4,256	3·17	3,618	2·70	638	·47
May	138,973	134,185	96·55	4,788	3·45	4,033	2·90	755	·55
June	130,163	125,628	96·52	4,535	3·48	3,701	2·84	834	·64
July	126,384	121,555	96·18	4,829	3·82	4,111	3·25	718	·57
August	132,967	128,302	96·49	4,665	3·51	3,977	2·99	688	·52
September	142,693	137,362	96·26	5,331	3·74	4,460	3·13	871	·61
October	165,689	159,878	96·49	5,811	3·51	4,904	2·96	907	·55
November	145,466	140,131	96·33	5,335	3·67	4,604	3·17	731	·50
December	131,377	126,305	96·14	5,072	3·86	4,411	3·36	661	·50
TOTAL	1,658,951	1,599,929	.....	59,022	.....	50,492	.....	8,530	.....
Monthly Average	138,246	133,327	96·44	4,918	3·56	4,808	3·05	711	·51

WESTERN CANADA

January	78,154	75,794	96·98	2,360	3·02	2,217	2·84	143	·18
February	71,864	70,010	97·42	1,854	2·58	1,668	2·32	186	·26
March	71,887	70,269	97·75	1,618	2·25	1,454	2·02	164	·23
April	71,578	70,161	98·02	1,417	1·98	1,258	1·76	159	·22
May	59,036	57,902	98·08	1,134	1·92	1,037	1·76	97	·16
June	58,559	57,493	98·18	1,066	1·82	926	1·58	140	·24
July	62,727	61,667	98·31	1,060	1·69	919	1·47	141	·22
August	65,607	64,649	98·54	958	1·46	792	1·21	166	·25
September	99,172	97,238	98·05	1,934	1·95	1,741	1·76	193	·19
October	120,165	117,353	97·66	2,812	2·34	2,405	2·00	407	·34
November	98,165	94,395	96·16	3,770	3·84	3,529	3·59	241	·25
December	67,614	65,944	97·53	1,670	2·47	1,526	2·26	144	·21
TOTAL	924,528	902,375	.....	21,653	.....	19,472	.....	2,181	.....
Monthly Average	77,044	75,240	97·72	1,804	2·28	1,623	2·05	182	·23

P. F. BAILLARGEON,
Secretary, B.R.C.

OTTAWA, February 21, 1936.

SUMMARIES OF ORDERS ISSUED BY THE BOARD OF RAILWAY COMMISSIONERS

52732. Feb. 3—Authorizing C.P.R. to operate its trains over subway at Iberville Street, Montreal, Que.

52733. Feb. 3—Authorizing C.P.R. to operate its trains over subway at Park Avenue, Montreal, Que.

52734. Feb. 3—Authorizing C.P.R. to use and operate bridge No. 2·00, Westmount Subd'n, Montreal Terminals, Que.

52735. Feb. 3—Authorizing C.P.R. to use and operate bridge over Seigneurs Street, Montreal, Que.

52736. Feb. 3—Authorizing C.P.R. to use and operate bridge over Ste. Marguerite Street, Montreal, Que.

52737. Feb. 3—Authorizing C.P.R. to use and operate bridge over private roadway leading to property of St. Maurice Valley Corpr'n, Belgo Division, mileage 20·5, St. Maurice Subd'n, Que.

52738. Feb. 3—Authorizing C.P.R. to use and operate bridge No. 0·2 on South Bank Branch, Montreal Terminals, Que.

52739. Feb. 3—Authorizing C.P.R. to use and operate bridge over Gladstone Ave., Ottawa, Ont.

52740. Feb. 3—Authorizing C.P.R. to operate its trains over subway at St. Joseph Boulevard, Montreal, Que.

52741. Feb. 3—Authorizing C.P.R. to operate its trains over subway on St. Denis Street, Montreal Que.

52742. Feb. 4—Authorizing C.P.R. to operate bridge across Papineau Avenue, Montreal, Que.

52743. Feb. 4—Declaring C.P.R. crossing of Kingston Road, 2·1 miles west of Belleville, Ont., protected to Board's satisfaction.

52744. Feb. 3—Declaring C.N. Rys. crossing of Dublin Street, Guelph, Ont., protected to Board's satisfaction so long as speed limitation of 10 miles an hour is in effect.

52745. Feb. 3—Authorizing Ont. Dep't Highways to construct Highway No. 7 at westerly approach to new bridge over Otonabee River and Trent Canal over C.N. Rys. spur to Brinton Carpet Co., and to raise level of said spur from Lansdowne to Morrow Street to a maximum of 9 inches at proposed level crossing.

52746. Feb. 6—Authorizing N.B. Dep't Public Works to divert Ridge Road northwesterly to a connection with Parkhill Road, in the parish of Chipman, N.B., and to close a crossing over C.N. Rys.

52747. Feb. 6—Approving abandonment of operation of C.N. Rys. Port Perry Subd'n between Cresswell and Port Perry, Ont., and directing that line between Port Perry and Whitby be rehabilitated and operated.

52748. Feb. 6—Authorizing village of Adanac, Sask., to divert road between Secs. 22 and 23-40-22 W3M., Sask., so as to cross C.P.R. about 210 feet east of existing crossing.

52749. Feb. 6—Authorizing city of Winnipeg, Man., to construct subway 76 feet wide under C.P.R. at Portage Avenue, Winnipeg, Man.

52750. Jan. 31—Authorizing C.P.R. to close crossing north of northwest quarter of Sec. 20-36-13 W2M., R.M. of Lakeview, Sask.

52751. Feb. 7—Approving Buffalo & Fort Erie Bridge Authority Tariff C.R.C. No. A-6 (cancelling C.R.C. No. A-5) covering tolls to be charged for use of Peace Bridge.

52752. Feb. 7—Authorizing Ontario Dep't Northern Development to maintain temporary highway crossing installed over C.P.R. at point immediately west of Selim Station, Ont.

52753. Feb. 7—Authorizing C.P.R. to close station at Eastman, Que. (caretaker to be appointed).

52754. Feb. 1—Authorizing Quebec Dep't of Roads to construct subway under C.P.R. at Ouimet Hill, parish of Ste. Rose, Co. Laval, Que.

52755. Feb. 8—Declaring that southbound traffic at C.N. Rys. crossing just north of Falkenburg, Ont., protected to Board's satisfaction.

52756. Feb. 6—Declaring C.N. Rys. crossing of Highway No. 33 at Trenton, Ont., protected to Board's satisfaction so long as speed limitation of 10 miles an hour is in effect.

52757. Feb. 7—Authorizing Alberta Dep't Public Works to construct highway crossing over C.P.R. in SW¼ Sec. 24-46-4 W5M., Alta.

52758. Feb. 8—Providing for certain amendments to subsections a, b, c, d, and e of paragraph 36 of the Rules of Government of the Operating Dep't of the Michigan Central R.R.

52759. Feb. 8—Authorizing C.P.R. to close crossing at mileage 18·8, Tisdale Subd'n, north of SW¼ of Sec. 15-33-12 W2M., in R.M. of Foam Lake No. 306, Sask.

52760. Feb. 8—Declaring C.N. Rys. crossing (Armstrong Crossing) about 3 miles east of Paris, Ont., protected to Board's satisfaction.

52761. Feb. 7—Declaring C.N. Rys. crossing 50 yards west of Stouffville, Ont., satisfactorily protected so long as speed limitation of 10 miles an hour is in effect.

52762. Feb. 11—Declaring that the legal rate applicable on Feb. 8, 1935, on rubber boots and shoes, carloads, from Toronto to Halifax, via C.P.R. and Dominion Atlantic Ry., when destined to Newfoundland, was 90 cents per 100 lbs., plus territorial charge of 3 cents per 100 lbs.

52763. Feb. 10—Approving relocation by C.N. Rys. of automatic bell from east to west side of crossing west of bridge over Restigouche river, mileage 12·40, Matapedia Subd'n, Que.

52764. Feb. 11—Authorizing C.N. Rys. to replace timber trestle at Long Beach, N.S., with a rock fill and steel span on creosoted timber abutments.

52765. Feb. 10—Directing C.N. Rys. to install automatic bell and wigwag, in lieu of present bell, at second crossing south of Hopewell, N.S.

52766. Feb. 11—Relieving C.P.R. from maintaining cattle guards at mileage 19·40, 21·26, 88·90 and 89·9, Belleville Subd'n, Ont.

52767. Feb. 11—Relieving C.P.R. from maintaining cattle guards at seven crossings on the Havelock Subd'n, Ont.

52768. Feb. 11—Authorizing Kent Coal Co., Ltd., to construct seven entries under C.N. Rys. in SW¼ Sec. 30-52-23 W4M., Alta.

52769. Feb. 11—Relieving C.P.R. from maintaining cattle guards at mileage 28·7, 35·3, 37·8, and 61·0, Hamilton-Goderich Subd'n, Ont.

52770. Feb. 11—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in Tariff C.R.C. No. 986 filed by Dominion Atlantic Ry. under sec. 9.

52771. Feb. 12—Declaring southbound traffic at C.N. Rys. crossing of St. Johns Highway between Brosseau and Lacadie, Que., protected to Board's satisfaction.

52772. Feb. 11—Refusing application of C.N. Rys. for approval of abandonment of portion of Hemmingford Subd'n between St. Remi and Hemmingford, Que.

52773. Feb. 13—Declaring C.P.R. crossing, first west of St. Claude, Man., protected to Board's satisfaction.

52774. Feb. 12—Refusing application of C.P.R. for authority to remove station agent at Major, Sask.

52775. Feb. 12—Authorizing C.P.R. to operate bridge over St. Roch Street, Three Rivers, Que.

52776. Feb. 11—Relieving C.N. Rys. from maintaining cattle guards at thirteen crossings on the Maynooth Subd'n, Ont.

52777. Feb. 14—Authorizing C.P.R. to open for traffic the diverted line of its railway between mileage 20·9 and 21·07, St. Maurice Valley Subd'n, Que.

52778. Feb. 14—Authorizing C.P.R. to use and operate bridge No. 20·96, St. Maurice Valley Subd'n, Que.

52779. Feb. 14—Recommending to Governor in Council for sanction agreement between C.P.R. and C.N. Rys. providing for joint use of C.P.R. lines between Iberville and Farnham, Que.

52780. Feb. 14—Approving abandonment of operation of C.N. Rys. line commencing at Stanstead, Shefford and Chambly Jct., Versailles Subd'n, thence easterly a distance of 10·87 miles, together with certain trackage in its Farnham Yard, a total distance of 11·27 miles.

52781. Feb. 13—Requiring C.N. Rys. to appoint and maintain a station agent at Glenbush, Sask., commencing June 1, 1936.

52782. Feb. 17—Approving and authorizing clearances at C.N. Rys. sidings serving Canada Wire and Cable Co., Ltd., and Dominion Motors, Ltd., at Leaside, Ont.

52783. Feb. 17—Relieving C.P.R. from maintaining signalman at crossing of C.P.R. and C.N. Rys. at Tillsonburg, Ont.

52784. Feb. 17—Requiring C.N. Rys. to install bell and wigwag at crossing of Dutch Village Road, Halifax, N.S.

52785. Feb. 17—Directing C.N. Rys. to install bell and wigwag at crossing 2·2 miles east of Spruce Grove, Alta.

52786. Feb. 18—Approving agreement between Bell Telephone Co. and East Wakefield Telephone Co., Ltd.

52787. Feb. 19—Authorizing Shames River Lumber Co. to lay pipe line under C.N. Rys. at Shames, B.C.

52788. Feb. 19—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, toll published in item 240, third revised page 23 of Tariff C.R.C. No. E-4757, filed by C.P.R. under sec. 9.

52789. Feb. 19—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in Tariff C.R.C. No. 988, filed by Dominion Atlantic Ry. under sec. 9.

52790. Feb. 19—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in Tariff C.R.C. No. 741, filed by Temiscouata Ry. under sec. 9.

52791. Feb. 20—Authorizing Alberta Dep't Public Works to construct highway crossing over C.P.R. in NW¼ Sec. 2-11-21 W4M., Alta.

52792. Feb. 20—Authorizing Vancouver, Victoria and Eastern Ry. and Nav. Co., to reconstruct draw span of Bridge No. 69 over Nicomeckl River, near Crescent, B.C.

52793. Feb. 19—Approving supp. 3 to agreement between Bell Telephone Co. and the Masham Telephone Co. (Inc.).

52794. Feb. 21—Authorizing C.P.R. to construct spur to serve Wm. Waldie & Sons, Limited, at mileage 25·3, Boundary Subd'n, B.C.

52795. Feb. 22—Declaring C.P.R. crossing of 63rd Avenue, Edmonton, Alta., protected to Board's satisfaction.

52796. Feb. 21—Declaring C.N. Rys. crossing, first south of Hanover Station, Ont., protected to Board's satisfaction so long as speed limitation of 10 miles an hour is in effect.

52797. Feb. 22—Approving Cornwall-Northern New York Bridge Corpr'n Tariff C.R.C. No. 3, covering tolls to be charged in respect of bridge between Cornwall, Ont., and Nyando, N.Y.

52798. Feb. 24—Directing that C.N. Rys. crossing of Walton Street, Port Hope, Ont., be protected by watchman between 8.30 a.m. and 4.30 p.m. daily, except Sunday.

52799. Feb. 24—Extending until Oct. 8, 1936, time within which C.P.R. may construct spurs to serve Canadian Sugar Factories, Limited, at Picture Butte, Alta.

52800. Feb. 24—Relieving New York Central R.R. from maintaining cattle guards at mileage 91·57, 91·98, 94·24, 96·57 and 98·88, Tp. Dereham, Ont.

52801. Feb. 24—Authorizing Esquimalt and Nanaimo Ry. to construct spur to serve Sidney Roofing and Paper Co., Ltd., Victoria, B.C.

52802. Feb. 22—Declaring C.N. Rys. crossing of Egerton Street, London, Ont., satisfactorily protected, subject to certain conditions *re* speed limitation, etc.

52803. Feb. 24—Declaring C.N. Rys. crossing of Petite Rivière Road, east of Allenby, Que., protected to Board's satisfaction.

52804. Feb. 27—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tariffs filed by C.N. Rys. under sec. 3.

52805. Feb. 26—Declaring Grand River Ry. crossing of Glasgow Street, Kitchener, Ont., satisfactorily protected so long as speed limitation of 10 miles an hour is in effect.

52806. Feb. 26—Approving reconstruction by C.P.R. of Bridge No. 69·86, Oshawa Subd'n, Ont.

52807. Feb. 26—Declaring C.N. Rys. crossing of Whites Road, north of Whites Station, Que., protected to Board's satisfaction.

52808. Feb. 27—Declaring C.P.R. crossing one mile east of Fairville, N.B., satisfactorily protected so long as speed limitation of 10 miles an hour is in effect, etc.

52809. Feb. 26—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in Supp. 31 to Tariff C.R.C. No. 4322, filed by C.P.R. under sec. 9.

52810. Feb. 28—Declaring C.N. Rys. crossing at Mile Post 1·0, Riverhurst Subd'n, Sask., protected to Board's satisfaction.

52811. Feb. 28—Declaring T.H. & B. Ry. crossing of Barton Street, Hamilton, Ont., satisfactorily protected so long as speed limitation of 15 miles an hour is in effect.

52812. Feb. 28—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in items 665 and 667, first revised page 39, of Tariff C.R.C. No. E-4757, filed by C.P.R. under sec. 9.

52813. Feb. 28—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, toll published in item 4-A of Supp. 5 to Tariff C.R.C. No. 879, filed by Dominion Atlantic Ry. under sec. 9.

52814. Feb. 28—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, toll published to Farnham, Que., in Supp. 4 to Tariff C.R.C. No. 194, filed by Fredericton and Grand Lake Coal and Ry. under sec. 9.

52815. Feb. 28—Authorizing C.N. Rys. to establish sight lines at crossing of No. 8 Highway at Astle, N.B.

52816. Feb. 27—Authorizing Ottawa Electric Ry. to operate its cars at a greater speed than 10 miles an hour in or through villages and over certain street crossings between the westerly limits of the city of Ottawa and the westerly terminus of its street railway.

52817. Feb. 29—Refusing application of C.N. Rys. for leave to remove the station agent at Albert, N.B.

52818. Mar. 2—Relieving C.P.R. from maintaining cattle guards at crossing at mileage 36·0, Adirondack Subd'n, Que.

52819. Mar. 2—Relieving C.P.R. from maintaining cattle guards at crossings at mileage 1·5, 2·4, 3·2, and 4·5, Listowel Subd'n, Ont.

52820. Mar. 2—Relieving C.P.R. from maintaining cattle guards at crossings at mileage 1·0, 1·99, 2·9, 3·8, St. Mary's Subd'n, Ont.

52821. Mar. 3—Relieving C.P.R. from maintaining cattle guards at crossings at mileage 42·80, 67·60 and 108·20, Galt Subd'n, Ont.

52822. Mar. 2—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in Tariff C.R.C. No. E-4770, filed by C.P.R. under sec. 9.

52823. Mar. 3—Authorizing C.P.R. to operate bridge over Green Avenue, Westmount, Que.

52824. Mar. 3—Authorizing C.P.R. to use and operate bridge across highway between Cons. 4 and 5, Tp. Tay, Co. Simcoe, Ont.

52825. Mar. 2—Rescinding Order No. 11318, July 29, 1910, in so far as it authorizes the construction of certain trackage on the C.N. Rys., Oakville Subd'n, Ont.

52826. Mar. 2—Approving Supp. 19 to Express Traffic Ass'n of Canada Tariff C.R.C. No. E.T. 694, covering amendments to Regulations for the Transportation by Express of acids, inflammables, oxidizing substances, samples of explosives, etc.

52827. Mar. 2—Declaring C.N. Rys. crossing just south of Pine Orchard Station, Ont., protected to Board's satisfaction.

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THE BOARD OF
RAILWAY COMMISSIONERS FOR CANADA

INDEX TO VOL. XXVI
OF
JUDGMENTS, ORDERS, REGULATIONS AND RULINGS OF THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA
FROM APRIL 1, 1936 TO MARCH 31, 1937

A

PAGE

Abandonment—Brandon, Saskatchewan & Hudson's Bay Ry. Co.—Brandon, Man., to International Boundary.. 138, 141, 175, 178
Abandonment—Brandon, Saskatchewan & Hudson's Bay Ry. Co.—Morden, Man., to International Boundary.. 196, 197
Abandonment—C.N.Rys.—Lac Ste. Anne Subd., Alta.—Peace River Jct. (M.31.0) to Darson Jct. (M.63.6).. 16, 19
Abandonment—C.N.Rys.—L'Orignal Subd.—Hawkesbury (M.47.5) to Hurdman (M.104.1); and Clarence Creek Spur—Rockland (M.0.0) to Clarence Creek (M.4.6).. 184, 189
Abandonment—C.N.Rys.—Nicolet Subd.—St. Leonard Jct. (M.0.0) to Nicolet (M.14.7).. 43, 45, 54, 57, 67, 249, 254, 259
Abandonment—C.P.R.—Nickel Subd.—O'Donnell to Turbine, Ont.. 260
Abandonment—V.V. & E.R. & N. Co.—Colebrook—Ladner line, B.C.. 326, 329
Abandonment—V.V. & E.R. & N. Co.—Princeton, B.C., to International Boundary.. 29, 42
Absorption—Switching charges—Cornwall, Ont.—Beach Furniture, Ltd.—C.N. and C.P.Rys.. 460
Accidents—Highway crossing—January, 1936.. 10
" " " February, 1936.. 77
" " " March, 1936.. 149
" " " April, 1936.. 211
" " " May, 1936.. 228
" " " June, 1936.. 245
" " " July, 1936.. 263
" " " August, 1936.. 312
" " " September, 1936.. 358
" " " October, 1936.. 400
" " " November, 1936.. 410
" " " December, 1936.. 437
" " " January, 1937.. 496
Acids, etc., carriage by express—Supp. 20 to Tariff C.R.C. No. E.T. 694—Approval.. 230
Agincourt, Ont.—Free express service—Cancellation—C.P.R.. 217
Ale, etc.—Rates—Between points in Saskatchewan—Express Traffic Assn.. 21
Algoma Central & Hudson Bay Ry. Co. and C.P.R.—Rates—Iron and steel articles —Sault Ste. Marie, Ont., to Montreal, etc.. 310
Amendment—G.O. 539 *re* rules covering preparation of accounts to apply to joint propects undertaken under order of Board.. 275
Amendment—G.O. *re* free and reduced transportation.. 383
Angliers, Que.—Crossing—C.P.R.—Cost.. 79, 87, 89, 96, 97
Associated Canadian Travellers, Calgary—Commercial travellers' certificates—Special transportation rates.. 131, 137
Associated Potato Shippers of New Brunswick, *et al*—Extension of time for leave to appeal to Supreme Court *re* rates on potatoes.. 335, 382
Austin Scales, *et al*—Extension of time for leave to appeal to Supreme Court *re* rates on potatoes.. 335, 382
Automobiles—Transportation by freight—Passenger with automobile plan—Canadian Passenger Assn.. 142, 203

B

PAGE

Beach Furniture, Ltd.—Switching charges—Cornwall, Ont.—Absorption—C.P. and C.N.Rys.. 460
Beer, etc.—Rates—Between points in Saskatchewan—Express Traffic Assn.. 21
Bell Telephone Co.—Form 1371 "Traffic Agreement"—Approval.. 311
Bell Telephone Co.—Joint use of poles.. 398
Bell Telephone Co. and Quebec-Montmorency Chamber of Commerce—Telephone service—Loretteville, etc., Que.. 423, 428, 434
Bethune St., Peterborough, Ont.—Crossing—Smith Transport, Ltd., Toronto, vs. C.N.Rys.. 361, 362
Board of Trade of Halifax, Saint John, etc.—Extension of time for leave to appeal to Supreme Court of Canada *re* rates on potatoes.. 335, 382
Bow Valley Municipal District No. 219, Alta.—Ten crossings over C.P.R.—Maintenance.. 324, 325
Brandon, Saskatchewan & Hudson's Bay R. Co.—Abandonment—Brandon, Man., to International Boundary.. 138, 141, 175, 178
Brandon, Saskatchewan & Hudson's Bay R. Co.—Abandonment—Morden, Man., to International Boundary.. 196, 197
Brandon, Saskatchewan & Hudson's Bay R. Co.—Supp. 2 to S.F. Tariff C.R.C. No. 1737—Approval.. 225
Bridge—Stirling Subd., C.P.R. (M.0.26)—Planking—Cost—C.P.R. Co. vs. Dept. Public Works, Alberta.. 4, 6
Briscoe, John, Renfrew, Ont.—Cattle pass—North Bonnechere Range, County of Renfrew—C.P.R.. 393, 395
Broadway St., Deloraine, Man.—C.P.R. crossing—Maintenance.. 321, 324
Brock St., Peterborough, Ont.—Protection—C.N.Rys.. 282, 284, 286
Broder Canning Co., *et al*, vs. V.V. & E.R. & N. Co.—Abandonment—Colebrook-Ladner Line, B.C.. 326, 329
Bulk grain to Midland Pacific Terminal, N. Vancouver—Car demurrage rules applying on—Canadian Car Demurrage Bureau, Winnipeg.. 295
Butter—Rates—Alix and Red Deer, Alta., to Vancouver, B.C.—Central Alberta Dairy Pool, Ltd., *etal*.. 292, 295

C

Cairns Bros.—Fences—Millbrook Jct. to Omemee, Ont.—C.N.Rys.. 351, 353
Canada & Gulf Terminal R. Co.—Filing tariffs under M.F.R.A.. 226
Canadian Car Demurrage Bureau, Winnipeg—Car demurrage rules—Bulk grain—Midland Pacific Terminal, N. Vancouver.. 295
Canadian Freight Assn.—New "Release" form—Carriage household goods, etc. (second-hand)—Approval.. 7
Canadian Freight Assn. (G. C. Ransom)—Rates—Fruits and vegetables from Niagara District.. 308
Canadian Freight Assn.—Supp. 9 to Canadian Freight Classification No. 18—Approval 9
C.N.Rys—Abandonment—Clarence Creek spur—Rockland to Clarence Creek.. 184, 189
C.N.Rys.—Abandonment—Lac Ste. Anne Subd.—Peace River Jct. (M.31.0) to Darson Jct. (M.63.6), Alta.. 16, 19
C.N.Rys.—Abandonment—Nicolet Subd., Que.—St. Leonard Jct. to Nicolet.. 43, 45, 54, 57, 67, 249, 254, 259
C.N.Rys.—Filing tariffs under M.F.R.A.. 19, 22, 99, 171, 177, 206, 218, 229, 233, 263, 270, 310, 354, 355, 380, 407, 417, 418, 419, 435(2), 436, 459, 461, 464, 465(2), 493
C.N.Rys.—Posting tariffs at certain stations.. 274
C.N.Rys.—Protection—Church, etc., streets, Moncton, N.B.. 313, 316, 318, 319, 320
C.N.Rys.—Protection—King, Sherbrooke, Simcoe, Charlotte, Brock and Hunter Streets, Peterborough, Ont.. 282, 284, 286, 287, 288
C.N.Rys.—Protection—Lorne Park station, Ont—Crossing.. 213, 214, 217
C.N.Rys.—Rates—Commodities—100 lbs.. 403
C.N.Rys.—Rates—Copper—Clara Belle and Copper Cliff, Ont., to Montreal, etc., Que. 353
C.N.Rys.—Rates—paperboard and pulpwood.. 143
C.N.Rys.—Rates—Washing and ironing machines—Toronto to Montreal.. 245
C.N.Rys.—Supp. to Tariff C.R.C. No. E-2304—Permission to file to correct errors in rates.. 6
C.N.Rys.—Train service—Deschaillons, Que., to Levis.. 111, 112, 120, 121, 130
C.P.R. Co.—Abandonment—Nickel Subd.—O'Donnell (M16.5) to Turbine (M.32.9). 260
C.P.R.—Agincourt, Ont.—Free express service—Cancellation.. 217
C.P.R. Co.—Correction—Rate in item 2145 of Tariff C.R.C. E-4775.. 77
C.P.R. Co. vs. Department Public Works, Alberta—Bridge—(M.0.26) Stirling subd.—Planking—Cost.. 4, 6

PAGE
C.P.R. Co.—Coal—Rate—Midland to Lindsay, Ont.. 175
C.P.R. Co.—Fertilizer, etc.—Rate—Montreal to Quebec City.. 21
C.P.R. Co.—Macaroni, etc.—Rate—Montreal to Halifax and Saint John.. 260
C.P.R. Co.—Filing tariffs under M.F.R.A..20, 68(2), 69(2), 71, 99, 100(2), 144, 145, 149, 167(2), 168, 176, 177, 207(2), 208, 219, 225, 226, 234(2), 235(2), 243(2), 271(2), 330, 357, 358, 397, 395, 398, 404, 405, 406, 418, 462, 463, 464, 494, 495(2)
C.P.R. Co. and Algoma Central & Hudson Bay R. Co.—Rates—Iron and steel articles —Sault Ste. Marie, Ont., to Montreal.. 310
C.P. and C.N.Rys—Free delivery—Summerland, West Summerland and Westbank, B.C.. 22
C.P.R. vs. Municipal District of Bow Valley No. 219—Ten crossings—Maintenance.. 324, 325
C.P.R. Co.—Posting tariffs at stations.. 354
C.P.R. Co.—Supp. to Tariff C.R.C. No. E-4734 *re* expiry date of certain items published in Supp. 13 to said Tariff—Permission to file.. 378
Canadian Passenger Assn.—Rates—Automobiles—"Passenger with auto plan".. 142, 203
Cancellation—Rates named in certain items of Tariff C.R.C. No. E-4734—C.P.R.. 378
Cancellation—Rates between stations in Canada—Crows Nest Southern Ry.. 105, 143
Cancellation—Rates to and from points in Canada, Morden, Man., and south via International Boundary—G.N.R. Co.. 202
Cattle-pass—North Bonnechere Rge., County of Renfrew—John Briscoe, Renfrew, vs. C.P.R.. 393, 395
Central Alberta Diary Pool, *et al*—Rates—Butter—Alix and Red Deer, Alta., to Vancouver, B.C.. 292, 295
Centreville to Weston, N.S.—Train service—D.A.R. Co.. 265, 266
Chamber of Commerce, Levis, Que., vs. C.N.Rys.—Obstruction—Grade crossing—St. Lawrence St. (Gibson's crossing), west of Hadlow station.. 443, 445, 446
Charlotte St., Peterborough, Ont.—Protection—C.N.Rys.. 282, 284, 287
Change—Grade crossing of Trans-Canada Highway over C.N.Rys.—McIntyre Lake, N.S.—Dept. of Highways, Nova Scotia.. 374, 376
Chisholm Saw Mills, Ltd., and Edmonton Box & Shook Co., Edmonton—Rates—Lumber, etc.—Alberta to Toronto, etc.. 454, 458
Chouinard, J. M., Tourville, Que—Rates— Mill refuse and lumber—Ste. Apolline to Montreal and Quebec—C.N.Rys.. 471, 475, 479, 484, 488
Church, etc., streets, Moncton, N.B.—Protection—C.N.Rys.. 313, 316, 318, 319, 320
Citrus fruits—Rate—Arizona, etc., to Winnipeg—Transcontinental Freight Bureau.. 416
Clarence Creek spur—Rockland to Clarence Creek—Abandonment—C.N.Rys.. 184, 189
Classification rating—Power boilers—Galt Ont., to Picture Butte, Alta.—C. C. Moore & Co., Vancouver, B.C.. 281
Closing—Cummane St., Truro, N.S.—C.N.Rys.. 467. 469, 470
Coal—Rate—Midland to Lindsay, Ont.—C.P.R. Co.. 175
Colebrook-Ladner line, B.C.—Abandonment—V.V. & E.R. & N. Co.. 326, 329
Commercial travellers' certificates—Transportation rates—Associated Canadian Travellers, Calgary.. 131, 137
Commodities—Rates—100 lbs.—Montreal and Quebec City—C.N.Rys.. 403
Cooke, G. R.—Authority to prepare and issue tolls—Vehicular tunnel—Detroit and Canada Tunnel Corp.. 416
Copper—Rates—Clara Belle and Copper Cliff, Ont., to Montreal, etc., Que—C.N.Rys.. 353
Cornwall, Ont.—Switching charges—Absorption—Beach Furniture, Ltd.—C.N. and C.P.Rys.. 460
Cornwall Twp. vs. United Counties of Stormont, etc.—Gates—C.N.R. crossing Cornwall station—Cost.. 373, 374
Correction—Errors in rates—C.N.Rys.—Permission to file supp. to Tariff C.R.C. No. E-2304.. 6
Correction—Error in rates—New York Central System—Permission to issue supp. to Tariff C.R.C. No. 3136.. 462
Correction—Rates—100 lbs. commodities from Montreal and Quebec City—C.N.Rys. 403
Correction—Rate—Copper—Clara Belle and Copper Cliff, Ont., to Montreal, etc., Que.—C.N.Rys.. 353
Correction—Rate in item 2145 of Tariff C.R.C. E-4775—C.P.R.. 77
Corrugated fibreboard containers for strike anywhere matches—Shipping Containers, Ltd., Montreal.. 227
Cost—Crossing—Angliers, Que—C.P.R.. 79, 87, 89, 96, 97
Cost—Crossing—Foothills, Alta.—Dept. of Public Works, Alberta, vs. C.N.Rys.. 289, 291
Cost—Gates—Cornwall station—C.N.R. crossing—Cornwall Twp. vs. United Counties of Stormont, Dundas, etc.. 373, 374
Cost—Planking bridge—(M.0.26) Stirling Subd.—C.P.R. vs. Department Public Works, Alberta.. 4, 6
Crossing—Angliers, Que.—Cost—C.P.R.. 79, 87, 89, 96, 97

PAGE

Crossing—Bethune St., Peterborough, Ont.—Smith Transport, Ltd., vs. C.N.Rys.. .. 361,362
Crossing—Broadway St., Deloraine, Man.—C.P.R.—Maintenance.. 321,324
Crossing—Cornwall station—Protection—Cost—Township of Cornwall vs. United Counties of Stormont, etc.—C.N.Rys.. 373,374
Crossing, farm—Laprairie, Ont.—Herve Page vs. C.N.Rys.. 371,372
Crossing, farm—St. Isidore Parish, County of Laprairie, Que.—Emile Lazure vs. C.N.Rys.. 376,377
Crossing, highway—Foothills, Alta.—C.N.Rys.—Dept. of Public Works, Alberta.. .. 289,291
Crossing—McIntyre Lake, N.S.—Grade—Trans-Canada Highway and C.N.Rys—Dept. of Highways, Nova Scotia.. 374,376
Crossing, public—Pouliot Road—Parish of Sayabec, Que., vs. C.N.Rys.. .. ..488, 490,492
Crossing—Re-opening—(M.65.38) Lachute Subd.—Olivier Menard vs. C.P.R..447, 450,453
Crossing—Third and Memorial Avenues, Saskatoon—Improvement—C.N.Rys.. 300,302
Crossing—Vancouver, B.C.—Sutherland Wharf vs. C.P.R. Co.. 11,15
Crows Nest Southern Ry.—Cancellation—Passenger fares, etc., between points in Canada.. 105,143
Crows Nest Southern Ry. (G.N.R.)—Train service—Fernie to Newgate, B.C.. 1,3,274
Crows Nest Southern Ry. (G.N.R.)—Tariff—Supp. 2 to S.F., C.R.C. No. 1798—Approval.. 309
Cumberland Ry. & Coal Co.—Filing tariffs under M.F.R.A.. 71
Cummane St., Truro, N.S.—Closing—C.N.Rys.. .. ..467, 469,470

D

Dalhousie St., Peterborough, Ont.—Protection—C.N.Rys.. .. ..282, 284,289
Dangerous practices—Motorists, etc., at protected railway crossings.. 151,341
Delivery service—Free—Agincourt, Ont.—Cancellation—C.P.R.. 217
Delivery service—Free—Certain points in British Columbia—Elimination—C.P. and C.N.Rys.. 22
Deloraine, Man.—Crossing—Broadway St.—C.P.R.—Maintenance.. 321,324
Delta Municipality, *et al, vs.* V.V. & E.R. & N.Co.—Abandonment—Colebrook-Ladner Line, B.C.. 326,329
Demurrage charge—Oat middlings—Cantic, Que.—C.N.Rys.—Western Canada Flour Mills, Calgary.. 389
Dept. of Highways, Nova Scotia—Grade crossing—Trans-Canada Highway and C.N.Rys.—McIntyre Lake, N.S.. 374,376
Dept. of Public Works, Alberta—Highway crossing—Foothills, Alta.. 289,291
Dept. of Public Works, Alberta, and C.P.R. Co.—Planking bridge—(M.0.26) Stirling subd.—Cost.. 4,6
Deschaillons and Levis, Que.—Train service between—C.N.Rys.. .. ..111,112,120, 121,130
Detroit & Canada Tunnel Corp.—Geo. R. Cooke, authorized to prepare and issue tolls—Vehicular tunnel.. 416
Detroit Tunnel—Tolls—Detroit & Windsor Subway Co., *et al*.. .. ..176, 267,415
Diversion—Cummane St., Truro, N.S.—C.N.Rys.. .. ..467, 469,470
D.A.R. Co.—Filing tariffs under M.F.R.A..7, 70, 72(3), 73, 74(2), 102(2), 103, 104, 145, 146(2), 147, 148, 168, 169(2), 170(2), 171, 172(2), 173, 178, 184, 203, 204(2), 205, 217, 218, 219, 220(2), 236(2), 244, 261(2), 262(2), 268(3), 269, 272, 304, 305(2), 306(2), 307(2), 308, 331, 332(2), 333, 334(2), 355, 356, 379, 380, 406, 408, 415, 417, 419, 420, 492,493
D.A.R. Co.—Train service—North Mountain Branch—Centreville to Weston, N.S.. 265,266

E

Edmonton Box & Shook Co., Edmonton, and Chisholm Saw Mills Co.—Rates—Lumber—Alberta to Toronto, etc.. 454,458
Eggs and returned empties—Rates—Western Canada—Express Traffic Assn.. 144
Errors in rates—Correction—C.N.Rys. permitted to file supp. to Tariff C.R.C. No. E-2304.. 6
Errors in rates—Correction—N.Y.C.R. Co.—Permission to file supp. to Tariff C.R.C. No. 3136.. 462
Express Traffic Assn.—Rates—Ale, etc., between points in Saskatchewan.. 21
Explosives, samples, etc.—Carriage by express—Supp. 20 to C.R.C. No. E.T. 694—Approval.. 230
Express Traffic Assn.—Rates—Eggs and returned empties in Western Canada.. 144
Express Traffic Assn.—Supp 20 to Tariff C.R.C. No. E.T. 694 *re* transportation by express of acids, etc.—Approval.. 230
Express Traffic Assn.—Supp. "G" to Express Classification No. 8 C.R.C. No. E.T. 1769—Approval.. 267
Express Traffic Assn.—Supp. "H" to Express Classification No. 8—Approval.. 460
Extension of time for leave to appeal to Supreme Court *re* rates on potatoes—Transportation Commission of Maritime Board of Trade, *et al*.. 335,382

F

PAGE

Fargo station, Ont.—Closing—P.M.R. Co. 183, 184
Farm crossing—Emile Lazure, Parish of St. Isidore, County of Laprairie, Que., vs. C.N.Rys. 376, 377
Farm crossing—Herve Page, Laprairie, Ont., vs. C.N.Rys. 371, 372
Fences—Millbrook to Omemee, Ont.—Cairns Bros. vs. C.N.Rys. 351, 353
Fernie and Newgate, B.C.—Train service between—Crows Nest Southern Ry. (G.N.R.) 1, 3, 274
Fertilizer, etc.—Rate—Montreal to Quebec City—C.P.R. Co. 21
Flooding—Land—County l'Islet, Que.—Achille Lizotte, St. Roch des Aulnaies, vs. C.N.Rys. 421, 422
Flour—Rates—Bay ports to Montreal, etc.—Ontario Flour Millers' Assn. 198, 202
Foothills, Alta.—Highway crossing—Dept. of Public Works, Alberta—C.N.Rys. . . . 289, 291
Form 1371 "Traffic Agreement"—Bell Telephone Company—Approval. 311
Fort William Elevator Co., Ltd.—Free switching—Fort William, Ont...C.N. and C.P.Rys. 363, 365, 371
Fredericton and Grand Lake Coal & Ry. Co.—Filing tariffs under M.F.R.A. . . 70, 209 (2), 273 (2), 330
Free express service—Agincourt, Ont.—Cancellation—C.P.R. Co. 217
Free delivery—Certain points in British Columbia—Elimination—C.P. and C.N.Rys. . 22
Free and reduced transportation—Amendment G.O. 550. 383
Free switching—Fort William, Ont.—Fort William Elevator Co. vs. C.N. and C.P.Rys. 363, 365, 371
Freight tariffs covering traffic between points in United States through Canada, etc. Approval. 210
Fruit and vegetables from Niagara District—Rates—Canadian Freight Assn. 308

G

GENERAL ORDERS—
No. 551—Canadian Freight Assn.—New "Release" Form—Approval. 7
No. 552—Canadian Freight Assn.—Supp. 9 to Canadian Freight Classification No. 18—Approval. 9
No. 553—Signals at highway crossings—Amending G.O. 468. 23
No. 554—Associated Canadian Travellers, Calgary—Commercial travellers' certificates. 137
No. 555—*Re* freight tariffs covering traffic between points in U.S. through Canada. 210
No. 556—Shipping Containers, Montreal—Corrugated fibreboard containers for "strike-anywhere matches". 227
No. 557—Amending G.O. *re* rules governing preparation of accounts to apply to joint projects undertaken under order of the Board—C.N. and C.P.Rys. 275
No. 558—The Bell Telephone Co.—Form 1371 *re* traffic agreement—Approval. . 311
No. 559—Amending G.O. 550 *re* free and reduced transportation. 383
No. 560—Bell Telephone Co. *re* joint use of poles. 398
Gibson's crossing, St. Lawrence St., Levis, Que.—Obstruction—Grade crossing—Chamber of Commerce, Levis, vs. C.N.Rys. 443, 445, 446
Grade crossing—St. Lawrence St. (Gibson's crossing)—Obstruction—Chamber of Commerce, Levis, Que., vs. C.N.Rys. 443, 445, 446
Grade crossing—Trans-Canada Highway over C.N.Rys.—McIntyre Lake, N.S.—Dept. of H'ways, Nova Scotia. 374, 376
Grade separation—Intersection C.N.Rys. and Victoria Park Ave., Toronto—Scarborough Twp. 193
G.N.R. Co. (Crows Nest Southern Ry.)—Train service between Fernie and Newgate, B.C. 1, 3, 274
G.N.R. Co.—Cancellation—Rates to and from points in Canada, Morden, Man., and south. 202

H

Herve Page, Laprairie, Ont.—Farm crossing—C.N.Rys. 371, 372
Highway crossing accidents—January, 1936. 10
Highway crossing accidents—February, 1936. 77
Highway crossing accidents—March, 1936. 149
Highway crossing accidents—April, 1936. 211
Highway crossing accidents—May, 1936. 228
Highway crossing accidents—June, 1936. 245
Highway crossing accidents—July, 1936. 263
Highway crossing accidents—August, 1936. 312
Highway crossing accidents—September, 1936. 358

PAGE
Highway crossing accidents—October, 1936.. 400
Highway crossing accidents—November, 1936.. 410
Highway crossing accidents—December, 1936.. 437
Highway crossing accidents—January, 1937.. 496
Hunter St., Peterborough, Ont.—Protection—C.N.Rys.. .. ..282, 284, 288

I

Improvement—Crossing—Third Ave. and Memorial Ave., Saskatoon—C.N.Rys.. .. 300, 302
Interpretation rules applying on bulk grain consigned to Midland Pacific Terminals, Vancouver—Canadian Car Demurrage Bureau, Winnipeg.. 295
Inflammables, carriage by express—Supp. 20 to C.R.C. No. E.T. 694—Approval.. 230
Iron and steel articles—Sault Ste. Marie, Ont., to Montreal, etc.—Rates—C.P. and Algoma Central & Hudson Bay Ry. Cos.. 310

J

John Briscoe, Renfrew, Ont.—Cattle-pass—North Bonnechere Rge., County of Renfrew —C.P.R.. .. .. 393, 395
Joint projects undertaken by order of the Board—Rules covering preparation of accounts to apply thereto—C.N. and C.P.Rys.. 275
Joint use of poles—Bell Telephone Co.. 398

K

King St., Peterborough, Ont.—Protection—C.N.Rys.. .. ..282, 284, 287

L

Lac Ste. Anne Subd., Alta.—Peace River Jct. (M.31.0) to Darson Jct. (M.63.6)—Abandonment—C.N.Rys.. .. .. 16, 19
Ladner Lumber, Ltd., *et al.* vs. V. V. & E. R. & N. Co.—Abandonment—Colebrook-Ladner Line, B.C.. .. .. 326, 329
Land—Flooding—Achille Lizotte, St. Roch des Aulnaies, Que. vs. C.N.Rys.. .. .. .. 421, 422
Lazure, Emile—Farm crossing—Parish of St. Isidore, County of Laprairie, Que.—C.N.Rys.. .. .. 376, 377
Levis, Que., Chamber of Commerce vs. C.N.Rys.—Obstruction—Grade crossing—St. Lawrence St. (Gibson's crossing) west of Hadlow station.. .. ..443, 445, 446
Lizotte, Achille, St. Roch des Aulnaies, Que., vs. C.N.Rys.—Flooding—Land.. .. .. 421, 422
Loretteville, etc., Que.—Telephone service—Quebec-Montmorency Chamber of Commerce vs. Bell Telephone Co.. .. ..423, 428, 434
L'Orignal Subd., C.N.Rys., between Hawkesbury and Hurdman; and Clarence Creek spur—Abandonment—C.N.Rys.. .. .. 184, 189
Lorne Park station, Ont.—Crossing—Protection—C.N.Rys.. .. ..213, 214, 217
Lumber—Rates—Alberta to Toronto, etc.—Chisholm Saw Mills Co. and Edmonton Box & Shook Co., Edmonton.. .. .. 454, 458
Lumber—Rates—Eastern Canada to official classification territory in U.S.. 76
Lumber and mill refuse—Rates—St. Apolline, etc., to Montreal and Quebec—J. M. Chouinard, Tourville, Que., vs. C.N.Rys.. .. ..471, 475, 479, 484, 488
Lutz St., Moncton, N.B.—Protection—C.N.Rys.. .. ..313, 316, 320

M

Macaroni, spaghetti, etc.—Rate—Montreal to Halifax—C.P.R.. 260
Maintenance—Crossing—C.P.R.—Broadway St., Deloraine, Man.. .. .. 321, 324
Maintenance—Ten crossings over C.P.R.—Municipal District of Bow Valley No. 219, Alta.. .. .. 324, 325
Maritime Coal, Railway & Power Co.—Filing tariffs under M.F.R.A.. .. ..67, 144, 335
Maritime Freight Rates Act—C.N.R. filing tariffs under..19, 22, 99, 171, 177, 206, 218, 229, 233, 263, 270, 310, 354, 355, 380, 407, 417, 418, 419, 435(2), 436, 459, 461, 464, 465(2), 493
Maritime Freight Rates Act—C.P.R. filing tariffs under..20, 68(2), 69 (2), 71, 99, 100(2), 144, 145, 149, 167(2), 168, 176, 177, 207(2), 208, 219, 225, 226, 234(2), 235(2), 243(2), 271(2), 330, 357, 358, 395, 397, 398, 404, 405, 406, 418, 462, 463, 464, 494, 495(2)
Maritime Freight Rates Act—Canada & Gulf Terminal Ry. Co. filing tariffs under.. 226
Maritime Freight Rates Act—Cumberland Ry. & Coal Co. filing tariffs under.. .. . 71
Maritime Freight Rates Act—D.A.R. Co. filing tariffs under—7, 70, 72(3), 73, 74(2), 102(2), 103, 104, 145, 146(2), 147, 148, 168, 169(2), 170(2), 171, 172(2), 173, 178, 184, 203, 204(2), 205, 217, 218, 219, 220(2), 236(2), 244, 261(2), 262(2), 268(3), 269, 272, 304, 305(2), 306(2), 307(2), 308, 331, 332(2), 333, 334(2), 355, 356, 379, 380, 406, 408, 415, 417, 419, 420, 492, 493

PAGE

Maritime Freight Rates Act—Fredericton & Grand Lake Coal & Ry. Co. filing tariffs under..70, 209(2), 273(2), 330
Maritime Freight Rates Act—Maritime Coal, Railway & Power Co. filing tariffs under 67, 144, 355
Maritime Freight Rates Act—Sydney & Louisburg Ry. Co., filing tariffs under 271, 408, 416, 462
Maritime Freight Rates Act—Témiscouata Ry. filing tariffs under..148. 173, 174, 205, 269, 272, 356, 357, 378, 409(2), 494
Matches "Strike anywhere"—Containers—Corrugated fibreboard—Shipping Containers, Montreal.. 227
McIntyre Lake, N.S.—Grade crossing—Trans-Canada Highway and C.N.Rys.—Department of Highways, Nova Scotia.. 374, 376
Memorial Ave., Saskatoon—Crossing—C.N.Rys.. 300, 302
Menard, Olivier, vs. C.P.R.—Crossing—Reopening—(M.65.38) Lachute Subd., Que.. 447, 450, 453
Midland Pacific Terminals, Ltd., North Vancouver, B.C.—Bulk grain consigned to—Rules applying—Interpretation—Canadian Car Demurrage Bureau.. 295
Millbrook Jct. to Omemee, Ont.—Fences—Cairns Bros. vs. C.N.Rys.. 351, 353
Mill refuse and lumber—Rates—Ste. Apolline, etc., to Montreal and Quebec—J. M. Chouinard, Tourville, Que., vs. C.N.Rys..471, 475, 479, 484, 488
Moore & Co., Engineers, Vancouver—Classification rating—Power boilers—Galt, Ont., to Picture Butte, Alta.. 281
Morden, Man., to International Boundary—Abandonment—Brandon, Saskatchewan and Hudson's Bay Ry. Co... 196, 197
Morden, Man., to International Boundary—Rates—Cancellation—G.N.R.. 202
Municipal District of Bow Valley No. 219, Alta.—Ten crossings over C.P.R.—Maintenance.. 324,325

N

New York Central R. Co.—Posting tariffs at stations.. 381, 396
New York Central R. Co.—S.M.F. Tariff C.R.C. No. 3614—Approval.. 230
New York Central R. Co.—Error in rates—Tariff C.R.C. No. 3136.. 462
N. St. C. & T.R. Co.—S.P. Tariff C.R.C. No. 325—Approval.. 303
Nickel Subd., C.P.R.—O'Donnell (M.16.5) to Turbine (M.32.9)—Abandonment.. 260
Nicolet Subd., C.N.Rys.—St. Leonard Jct. to Nicolet—Abandonment..43, 45, 54, 57, 67, 249, 254, 259
North Mountain Br., D.A.Ry.—Centreville to Weston—Train service.. 265, 266

O

Oat middlings—Demurrage—Cantic, Que.—Western Canada Flour Mills, Calgary—C.N.Rys.—Ruling.. 389
Obstruction—Grade crossing—St. Lawrence St. (Gibson's crossing), west of Hadlow station—Chamber of Commerce of Levis, Que., vs. C.N.Rys..443, 445, 446
Olivier Menard vs. C.P.R.—Crossing—Reopening—(M.65.38) Lachute Subd.. ..447, 450, 453
Ontario Flour Millers Assn.—Flour—Rates—Bay ports to Montreal, etc.. 198, 202
Orders issued by Board—Summaries.. ..24, 106, 179, 221, 231, 246, 276, 326, 384, 411, 438, 497
Oxidizing substances, carriage by express—Supp. 20 to C.R.C. No. E.T. 694—Approval 230

P

Page, Herve, Laprairie, Que.—Farm crossing—C.N.Rys... 371, 372
Paperboard and pulpwood—Rates—C.N.Rys.. 143
Passenger with Automobile Plan—Transportation of automobiles—Canadian Passenger Assn.. 142, 203
P.M.R. Co.—Fargo station, Ont.—Closing.. 183, 184
Poles—Joint use—Bell Tel. Co.. 398
Porter, ale, etc.—Rates—Points in Saskatchewan—Express Traffic Assn.. 21
Porter Bros., Ltd., *et al*—Extension of time for leave to appeal to Supreme Court *re* rates on potatoes.. 335, 382
Posting tariffs at stations—C.N.Rys.. 274
Posting tariffs at stations—C.P.R.. 354
Posting tariffs at stations—N.Y.C.R. Co.. 381
Potatoes—Rates—Provinces of New Brunswick, Nova Scotia and P.E.I., *et al*—Extension of time for leave to appeal to Supreme Court.. 335,382
Power boilers—Classification rating—Galt, Ont., to Picture Butte, Alta.—C. C. Moore & Co., Vancouver, B.C.. 281
Pouliot Road—Public crossing—Parish of Sayabec, Que., vs. C.N.Rys.. ..488, 490, 492

S

PAGE

P.E.I. Potato Growers' Assn., *et al*—Extension of time for leave to appeal to Supreme Court *re* rates on potatoes.. 335, 382
Princeton, B.C., to International Boundary—V.V. & E.R. & N.Co.—Abandonment.. 29, 43
Protection—Church, etc., streets, Moncton, N.B.—C.N.Rys.. 313, 316, 318, 319, 320
Protection—King, Sherbrooke, Simcoe, Charlotte, Hunter, Brock and Dalhousie Streets, Peterborough, Ont.—C.N.Rys.. 282, 284, 286, 287, 288, 289
Protection—Lorne Park station, Ont.—C.N.R. crossing.. 213, 214, 217
Provinces of New Brunswick, Nova Scotia and P.E.I., *et al*—Extension of time for leave to appeal to Supreme Court *re* rates on potatoes.. 335, 382
Public crossing—Pouliot Road—Parish of Sayabec vs. C.N.Rys.. 488, 490, 492
Public Works Dept., Alberta—Crossing—Foot Hills, Alta.—C.N.Rys.. 289, 291

Q

Quebec-Montmorency Chamber of Commerce vs. Bell Telephone Co.—Telephone service—Loretteville, etc., Que.. 423, 428, 434
Queen St., Moncton, N.B.—Protection—C.N.Rys.. 313, 316, 320

R

Rates—Ale, etc.—Points in Saskatchewan—Express Traffic Assn.. 21
Rates—Butter—Alix and Red Deer, Alta., to Vancouver, B.C.—Central Alberta Dairy Pool, *et al*.. 292, 295
Rates—Citrus fruits—Arizona, etc., to Winnipeg—Trans-Canada Freight Bureau.. 416
Rates—Copper—Clara Belle and Copper Cliff, Ont., to Montreal and Quebec—C.N.Rys.. 353
Rates—Eggs and returned empties in western Canada—Express Traffic Assn.. 144
Rate—Fertilizer, etc.—Montreal to Quebec City—C.P.R.. 21
Rates—Flour—Bay ports to Montreal, etc.—Ontario Flour Mills Assn.. 198, 202
Rates—Fruits and vegetables from Niagara District—Canadian Freight Assn.. 308
Rates—Iron and steel articles from Sault Ste. Marie, Ont., to Montreal, etc.—C.P.R. and Algoma Central & Hudson Bay R. Co.. 310
Rates—Lumber—Alberta to Toronto, etc.—The Chisholm Saw Mills Co. and Edmonton Box & Shook Co., Edmonton.. 454, 458
Rates—Lumber—Eastern Canada to official classification territory in U.S.. 76
Rates—Lumber and mill refuse—Ste. Apolline, Que., to Montreal and Quebec—J. M. Chouinard, Tourville, Que., vs. C.N.Rys.. 471, 475, 479, 484, 488
Rates—Macaroni, etc.—Montreal to Halifax and Saint John—C.P.R.. 260
Rates—Paperboard and pulpwood—C.N.Rys.. 143
Rates—Potatoes—Transportation Commission of the Maritime Board of Trade, *et al.* Extension of time for leave to appeal to Supreme Court.. 335, 382
Rates—Silk—Pacific Coast territory to Eastern Canada—Transcontinental Freight Bureau.. 403
Rates—Washing and ironing machines—Toronto to Montreal—C.N.Rys.. 245
Rates between stations in Canada—Cancellation—Crows Nest Southern Ry.. 105
Rates—100 lbs. on commodities from Montreal and Quebec City—C.N.Rys.. 403
Rates to and from points in Canada, Morden, Man., and south via International Boundary—G.N.R.. 202
Rate transportation—Free and reduced.. 383
Rating (classification)—Power boilers—Galt, Ont., to Picture Butte, Alta.—C. C. Moore & Co., Vancouver, B.C.. 281
"Release" form, new—Carriage of household goods, etc., second-hand—Canadian Freight Assn.—Approval.. 7
Reopening—Crossing—(M.65.38) Lachute Subd., Que.—Olivier Menard vs. C.P.R.. 447, 450, 453
Rubber bands—Inclusion in stationery list—Stationers' Guild of Canada.. 189, 193
Rules applying on bulk grain to Midland Pacific, North Vancouver, B.C.—Interpretation—Canadian Car Demurrage Bureau, Winnipeg.. 295
Rules covering preparation of accounts to apply on joint projects undertaken by Board—C.N. and C.P.Rys.. 275
Ruling—Demurrage charge—Oat middlings—Cantic, Que.—C.N.Rys.—Western Canada Flour Mills, Ltd., Calgary.. 389

S

St. George St., Moncton, N.B.—Protection—C.N.Rys.. 313, 316, 319
St. Lawrence St. (Gibson's crossing), west of Hadlow station, Levis, Que.—Levis Chamber of Commerce vs. C.N.Rys.—Obstruction—Grade crossing.. 443, 445, 446

PAGE

Saskatoon, Sask.—Crossing—C.N.Rys.—Third and Memorial Avenues—Improvement. 300, 302
Sayabec, Parish, Que.—Public crossing—Pouliot Road—C.N.Rys.. .. ..488, 490, 492
Scarborough Twp.—Grade separation—Victoria Park Ave., Toronto—C.N.Rys.. 193
Second Narrows Bridge, Vancouver, B.C.—Tolls—Vancouver Harbour Commrs.. .. 20, 270
Sherbrooke St., Peterborough, Ont.—Protection—C.N.Rys.. .. ..282, 284, 287
Shipping Containers, Ltd., Montreal—Corrugated fibreboard containers for "strike anywhere" matches.. 227
Silk—Rates—Pacific Coast territory to Eastern Canada—Trans-Continental Freight Bureau.. 403
Simcoe St., Peterborough, Ont.—Protection—C.N.Rys.. .. ..282, 284, 288
Smith Transfer Ltd., Toronto—Crossing—Bethune St., Peterborough, Ont.—C.N.Rys. 361, 362
Specifications for shipping containers for transportation by express of acids, etc.—Tariff C.R.C. No. E.T. 70—Approval.. 379
Stationers' Guild of Canada—Rubber bands—Inclusion in stationery list.. .. .. 189, 193
Steel and iron articles—Rates—Sault Ste. Marie, Ont., to Montreal, etc.—C.P. and Algoma Central & Hudson Bay R. Cos.. 310
Summaries—Orders issued by the Board..24, 106, 179, 221, 231, 246, 276, 336, 384, 411, 438, 497
Summerland, etc., B.C.—Free delivery points—Elimination—C.P.R.. 22
Sunny Alberta Creameries, Ltd., *et al.*—Butter—Rates—Alix and Red Deer, Alta., to Vancouver, B.C.. .. .. 292, 295
Supp. 9 to Canadian Freight Classification No. 18—Canadian Freight Assn.—Approval 9
Supp. 1 to S.F. Tariff C.R.C. No. 1737—Brandon, Saskatchewan & Hudson's Bay R. Co.—Approval.. 178
Supp. 2 to S.F. Tariff C.R.C. No. 1737—Brandon, Saskatchewan & Hudson's Bay R. Co.—Approval.. 225
Supp. 20 to Tariff C.R.C. No. E.T. 694 *re* transportation by express of acids, etc.—Express Traffic Assn.—Approval.. 230
Supp. "G" to Express Classification No. 8 C.R.C. E.T. 1769—Express Traffic Assn.—Approval.. 267
Supp. "H" to Express Classification No. 8—Express Traffic Assn.—Approval.. 460
Supp. to Tariff C.R.C. No. 3136—New York Central System—Permission to file to correct clerical error in rates.. 462
Sutherland Wharf vs. C.P.R.—Crossing—Vancouver, B.C.. .. .. 11, 15
Switching charges—Absorption—Cornwall, Ont.—Traffic to Beach Furniture—C.N. and C.P.Rys.. 460
Sydney & Louisburg R. Co.—Filing tariffs under M.F.R.A.. .. ..271, 408, 416, 462

T

Tariffs—Posting at stations—C.N.Rys.. 274
Tariffs—Posting at stations—C.P.R. Co.. 354
Tariffs—Posting at stations—New York Central R. Co.. 381
Tariffs (freight) covering traffic between points in U.S. and Canada, etc.. 210
Tariff (S.F.) Crow's Nest Southern Ry.—Supp. 2 to C.R.C. 1798—Approval.. 309
Tariff (S.M.F.) C.R.C. No. 3614—N.Y.C.R. Co.—Approval.. 230
Tariff (S.P.) C.R.C. No. 295—N.St.C. & T.Ry. Co.—Approval.. 303
Tariff C.R.C. E.T. 700—*Re* specifications for shipping containers for transportation by express of acids, etc.—Approval.. 379
Tariffs—Newgate and Fernie, B.C.—Cancellation—Crows Nest Southern Ry.. ..105, 143, 303
Telephone service—Loretteville, etc., Que.—Quebec-Montmorency Chamber of Commerce vs. Bell Telephone Co.. .. ..423, 428, 434
Témiscouata Ry Co.—Filing tariffs under M.F.R.A..148, 173, 174, 205, 269, 272, 356, 357, 378, 409(2), 494
Tolls—Detroit Tunnel—Detroit and Windsor Subway Co.. .. ..176, 267, 415
Tolls—Second Narrows Bridge, Vancouver, B.C.—Vancouver Harbour Commrs.. .. 20, 270
"Traffic Agreement," Form 137—Bell Telephone Co.—Approval.. 311
Train service—Deschaillons and Levis, Que.—C.N.Rys.. .. ..111, 112, 120, 121, 130
Train service—D.A.R. Co. North Mountain Branch (Centreville to Weston).. .. .. .. 265, 266
Train service—Fernie and Newgate, B.C.—Crows Nest Southern Ry. (G.N.R.).. .. .. 1, 3, 274
Trans-Continental Freight Bureau—Citrus fruits—Rate—Arizona, etc., to Winnipeg 416
Trans-Continental Freight Bureau—Silk—Rates—Pacific Coast territory to Eastern Canada.. 403
Transportation Commission, Maritime Board of Trade, *et al.*—Extension of time for leave to appeal to Supreme Court *re* rates on potatoes.. 335
Transportation—Free and reduced rate.. 383

PAGE

Transportation rates—Associated Canadian Travellers, Calgary—Commercial travellers' certificates.. .. .. .

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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In the matter of the proposed discontinuance of train service on the Crow's Nest Southern Railway (Great Northern Railway) between Fernie, B.C., and Newgate, B.C.

(File No. 39137).

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER:

This application was heard by the Board at Fernie, B.C., on February 20, 1936, in the presence of counsel for the railway company and for the Western Pine Lumber Company, and also in the presence of a representative of the Fernie Board of Trade.

As the case developed at the hearing it resolved itself merely into an application by the railway company to discontinue the operation of a daily passenger train between Rexford, in the United States, and Fernie, in the province of British Columbia. The passenger train in question has consisted heretofore of a gas-electric car which was operated between the above points upon the company's line of railway.

The Crow's Nest Southern Railway Company was incorporated by a statute of the province of British Columbia, Cap. 73, 1901, and it was contended by counsel for the railway company that the Board had no jurisdiction in regard to this company as it was purely a provincial road and did not come under the provisions of the Railway Act. However, it will not be necessary to determine this question upon the present application, and any order made upon this application will be without prejudice to the right of the company to raise the question of jurisdiction should occasion arise for so doing in the future.

The southern terminal point of the above railway is at Rexford in the state of Montana. The railway then extends to Gateway upon the International Boundary between Canada and the United States, a distance of approximately 8·4 miles, and from the international boundary the railway originally extended to Michel in the province of British Columbia, a distance of about 83 miles. The primary purpose of this line of railway was the transportation of coal from the Crow's Nest Coal fields to points south on the line, chiefly

for use by the Great Northern Railway Company upon its lines in the United States. The line in Canada was constructed during the years 1902 and 1903, but in the year 1925 the line between Michel and Fernie, about 21 miles in length, was abandoned by the railway company.

The Crow's Nest Southern Railway still owns and operates the line from the international boundary to Elko, a distance of 33·75 miles, and also from Elko to Fernie, a distance of 19·57 miles, the last mentioned portion of the line being operated under an agreement made by the applicant company with the Canadian Pacific Railway Company whereby the applicant company obtains running rights over the tracks of the Canadian Pacific Railway Company between the above points. All the capital stock of the Crow's Nest Southern Railway Company is owned by the Great Northern Railway Company, which is a foreign corporation having its chief place of business at St. Paul, Minnesota. All the rolling stock and equipment used in the operation of the applicant company's line is owned and controlled by the Great Northern Railway Company. The applicant company has no rolling stock or equipment of its own.

Fernie, B.C., which is the northern terminal of this railway, is a town having a population of about 2,732. It is situated upon the Crow's Nest Branch of the Canadian Pacific Railway which runs east and west through the town, and it has also had the advantage of the applicant company's railway running south to Rexford in the state of Minnesota, where it connected with the lines of the Great Northern Railway Company giving access to Seattle and thence to Victoria and Vancouver on the western side, and giving access also to all eastern points upon the lines of the Great Northern Railway Company.

During the early years after construction the applicant company seems to have done a considerable business in the shipment of coal and lumber over its line, but in recent years the coal shipments have seriously fallen off largely owing to the fact that the Great Northern Railway Company has now replaced the use of coal in its locomotives to a very large extent by the use of oil fuel. From the figures submitted by the applicant company at the hearing it is apparent that during recent years there has been a heavy falling off in the business done upon the line, both in freight and passenger traffic. In recent years there has been only one mixed train per week running between Rexford and Fernie. This train started out from Rexford on a fixed day each week and returned from Fernie the following day, and this train seems to have accommodated all the freight business which was available. In addition to this mixed train there has been in operation between Rexford and Fernie one gas-electric car which made a daily trip and return between Rexford and Fernie. The passenger business which has been done upon this car of late years, according to the returns submitted by the applicant company, is rather insignificant. For the last three years the figures for passenger traffic show the following results:—

Year	Total passengers carried	Total revenue received	Average passengers per trip	Average revenue per trip
1933	1,393	$1,213.11	2.5	$2.17
1934	1,571	1,228.10	3.1	2.39
1935	1,543	1,194.63	3.0	2.35

The cost of operation of the gas-electric car aggregated about $50 per day for the return trip and it is doubtful if this sum included all the actual expense of the railway in the operation of this car. In my opinion, there is no passenger traffic over this line to warrant the continuance of a daily service of the gas-electric car. It is evident from the above figures that the inhabitants of the neighbourhood do not patronize this line for travel to any extent. There is a highway from Fernie south to the international boundary which may account

for a good deal of the travel southward from Fernie, while the line of the Canadian Pacific Railway would absorb travel east and west. I do not think that the residents of the district affected will be seriously inconvenienced if the applicant company be permitted to discontinue the gas-electric car, as set out in this application.

It is to be noted that the applicant company has already obtained the approval of the Interstate Commerce Commission to the abandonment of its line of railway between the international boundary and Rexford in the state of Montana, so that in future there will be no connection from the international boundary to the line of the Great Northern Railway, for either freight or passengers, from points on the line which is still operated in Canada.

It became apparent at the hearing that those who appeared for the various interests in the neighbourhood did not seriously object to the discontinuance of this daily passenger service, but the fear was expressed that if this service were discontinued a subsequent application might be made by the applicant company for the total abandonment of the line, and it was this feature of the matter which caused serious apprehension among the local community.

Under the circumstances above set out, I am of opinion that the application should be approved and the daily train service by gas-electric car should be discontinued. An Order will be made accordingly.

March 11, 1936.

Commissioners Stoneman and Stone concurred.

ORDER No. 52883

In the matter of proposed discontinuance of train service on the Crows Nest Southern Railway (Great Northern Railway) between Fernie and Newgate, in the Province of British Columbia.

File No. 39137

Friday, the 13th day of March, A.D. 1936.

Hon. Hugh Guthrie, K.C., *Chief Commissioner.*

J. A. Stoneman, *Commissioner.*

G. A. Stone, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Fernie, British Columbia, February 20, 1936, in the presence of counsel for the railway company, the Fernie Board of Trade, and the Western Pine Lumber Company, Limited, and what was alleged,—

It is ordered: That the Great Northern Railway Company (Crows Nest Southern Railway) be, and it is hereby, granted leave to discontinue the operation of its gas-electric car running daily between the International Boundary and Fernie, British Columbia.

H. GUTHRIE,
Chief Commissioner.

Application of the Canadian Pacific Railway Company for an Order directing the Department of Public Works of the Province of Alberta to pay to the Company the amount which it has expended in replacing the upper layer of planking of overhead bridge at Mile 0·26, Stirling Subdivision of Canadian Pacific Railway, on road allowance between Sections 23 and 24, Township 5, Range 6, West 4th Meridian, in the Province of Alberta; and to bear the cost of maintenance of the flooring of the bridge in future.

(File No. 19574.29)

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER:

This application pertains to a bridge erected over the Stirling Subdivision of the Canadian Pacific Railway near the hamlet of Manyberries, in the Province of Alberta, upon a road allowance between sections 23 and 24, township 5, range 6, west of 4th Meridian. This highway forms part of Highway Improvement District No. 32 in the said province. The highway in question is under the jurisdiction of the Department of Public Works in the said province.

Upon the hearing of the application which took place at Edmonton on 28th day of February, 1936, counsel appeared for the Canadian Pacific Railway Company which is the applicant company, and also for the Department of Public Works of the Province of Alberta.

In the year 1914 the applicant company applied to the Board for authority to construct a grade crossing at the above point, and the Board made an order, No. 22943, authorizing the construction of a grade crossing. Subsequently, the applicant company applied to the Board for authority to construct an overhead crossing at the point in question, instead of the grade crossing formerly authorized, and by Order No. 25642 dated November 15, 1916, the Board granted the necessary authority for an overhead crossing. The consent of the Department of Public Works of the Province of Alberta was endorsed upon the plan filed upon the application as set out in the said order. There is also endorsed upon the plan the following words:—

> "Bridge to be constructed according to C.P.R Standard Overhead Crossings Plan B-14-38, excepting that the floor to be single ply plank four inches thick."

The change from a grade crossing to an overhead crossing was decided by the applicant company on account of an extensive cutting which would have been necessary to bring the level of the highway down to railway grade for the purpose of a grade crossing.

The overhead crossing or bridge was erected in 1916 since which time the bridge has constituted a portion of the highway, but has always been maintained by the applicant company. The Order of the Board made no provision for maintenance of the structure.

From 1916 down to 1932 the surface of the bridge which was of 4-inch plank remained as originally constructed, but in 1932 the applicant company decided that it had become necessary to refloor the bridge. Before undertaking the work the applicant company inquired of the Department of Public Works as to whether the Department would bear the expense of repairing the wearing surface of the bridge, but the Department declined to do so. The applicant company then proceeded to refloor the bridge with double planking and in the present application asks for an Order directing the Department of Public Works to pay the cost of one tier of planking placed upon the bridge, or the sum of $303.80, and to bear the cost of maintenance of the flooring of the bridge in the future.

It was admitted by counsel for the applicant company at the hearing that the railway was in a junior position to the highway in respect of this crossing. The road in question is known locally as a secondary road. It is a dirt road and has never been gravelled. The Department of Public Works has never paid anything on account of the maintenance of the said bridge or for repairs to the surface thereof.

Prior to the construction of the railway there was considerable travel over this road but during recent years travel has fallen off about 40 per cent. This is due largely to the fact that about one-half of the former population of the district has migrated to other parts owing to crop failure in recent years arising from drought and from other causes.

Where no special circumstances exist the general rule adopted by the Board and followed in many decisions in regard to the question of maintenance of the surface of bridge structures which form part of highways over railways is that the municipal or other authorities responsible for the maintenance of the highway shall be responsible for the maintenance of the wearing surface of the bridge. This is a broad statement of the general rule adopted by the Board in such cases.

In my opinion there are special circumstances in connection with the present case which take it out of the general rule mentioned above. I think the facts and circumstances surrounding the original erection of this bridge involve matters which do not arise in ordinary applications for maintenance of the surface or flooring of bridge structures. Had an ordinary grade crossing been constructed at this point as originally intended by the railway and as authorized by Order of the Board, No. 22943, the railway would have been under an obligation to maintain the crossing at all times, as provided by the Railway Act, without any cost to the province in so far as the surface of the roadway was between the ends of the ties. However, on account of engineering difficulties involving heavy expenditure the applicant company decided to abandon the grade crossing and substituted therefor an overhead bridge to carry the highway over its railway and this substitution was approved by the Board by Order No. 25642. This change in the original proposal was made at the instance of the applicant company, with the consent of the Department of Public Works of the Province of Alberta as endorsed upon the plans filed. But this consent did not involve the provincial authorities in any obligation to maintain any portion of the bridge structure.

In my opinion the railway has not in any way been prejudiced by what has taken place. Had the original plan for a grade crossing been carried out, the railway would have had to bear the whole cost of maintaining the crossing as well as other incidentals in the way of fences, since 1916. The original bridge surface or flooring seems to have withstood the wear and tear of traffic upon it for 18 years before new flooring became necessary, which cost the applicant company $303.80 for a single layer of 4-inch plank. This would be equivalent to an annual charge of between $16 and $17 for maintenance. It must also be borne in mind that the highway in question is only a dirt road in a rural district upon which travel is comparatively light. The provincial expenditure upon roads in this district has not been great. The bridge in question is about 100 feet in length. It is upon a highway which is 24 miles in length and the average annual cost per mile for maintaining this highway has been only $44.29 during the past six years. The normal expenditure of maintaining 100 feet of this highway had there been no railway would have been less than $1.00 per year. Under all the circumstances, I think the matters involved in this application constitute a special case which should not come within the general rule adopted by the Board in regard to the cost of surfacing and resurfacing bridge structures.

For the reasons above set out, I think this application should be dismissed.

Dated March 20, 1936.

Concurred in by Commissioners Stoneman and Stone.

ORDER No. 52917

In the matter of the overhead bridge constructed across the road allowance between Sections 23 and 24, Township 5, Range 6, West 4th Meridian, in the Province of Alberta, under Order No. 25642, dated November 15th, 1916;

And in the matter of the application of the Canadian Pacific Railway Company for an Order directing the Department of Public Works for the Province of Alberta to pay to the Company the amount which it has expended in replacing the upper layer of planking of the said bridge, and to bear the cost of maintenance of the flooring in future.

File No. 19574.29

TUESDAY, the 24th day of March, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
J. A. STONEMAN, Commissioner.
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Edmonton, Alberta, February 28, 1936, in the presence of counsel for the Canadian Pacific Railway Company, the Department of Public Works for the Province of Alberta, and the Canadian National Railways, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52833

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for permission to file, on less than statutory notice, a supplement to Tariff C.R.C. No. E-2304, to correct errors.

File No. 27612.129

SATURDAY, the 7th day of March, A.D. 1936.

S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*

Upon its appearing that the said railways have made an error in publishing certain rates in Supplement No. 11 to Tariff C.R.C. No. E-2304, and its being expedient that corrections be made effective not later than April 1, 1936,—

It is ordered: That the applicants be, and they are hereby, permitted to make the supplement issued to correct errors in rates published in Supplement No. 11 to Tariff C.R.C. No. E-2304 effective on five days' notice, but not earlier than April 1, 1936: Provided similar action be taken by the Interstate Commerce Commission.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 52847

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 11th day of March, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 41 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 41 to Tariff C.R.C. No. 851, approved herein, are as follows:—

Item 2 From	Cents per 100 pounds
Bridgetown, N.S.	21½
Middleton, N.S.	22½
Item 13	22½

H. GUTHRIE,
Chief Commissioner.

GENERAL ORDER No. 551

In the matter of the application of the Canadian Freight Association, on behalf of railway companies subject to the jurisdiction of the Board, under Section 348 of the Railway Act, for an Order approving a new form of "Release" in connection with the carriage of household goods, furniture and settlers' effects (second-hand), on file with the Board under File No. 23507.

TUESDAY, the 17th day of March, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

Upon reading what is filed in support of the application and the report of the Chief Traffic Officer of the Board,—

It is ordered as follows, namely:—

1. That the said form of "Release," being a form of special contract limiting the liability of the carrier in respect of the carriage of the undermentioned traffic, on file with the Board under the said file No. 23507, be, and it is hereby, approved, the said form being in the terms following, namely:—

SPECIAL CONTRACT

..... Railway Company.

LIMITATION OF RESPONSIBILITY IN CONNECTION WITH THE CARRIAGE OF HOUSEHOLD GOODS, FURNITURE AND SETTLERS' EFFECTS

(All Second-Hand)

Consignee and Destination	Description of Articles

In consideration of the ..... Railway Company and its connecting carriers receiving the above-mentioned property for carriage from .....station consigned to ..... at ..... station, at a lower rate than the said company and its connecting carriers might otherwise lawfully charge and be liable for injury to or loss of the said goods and property, or any of it, the said lower and the higher rates being as provided for in the Canadian Freight Classification, or current special tariffs, I do hereby undertake that no claim in respect of injury to, or loss of, the said property, or any of it, will be made against the said company and its connections, or any of them, exceeding the amount of ten (10) cents per pound, whether such injury or loss is occasioned by the negligence of the said company, its connections, or any of them, or its or their servants or agents, or any of them, or otherwise howsoever.

.....*Shipper.*

2. That all railway companies under the jurisdiction of the Board be, and they are hereby, directed to discontinue the use of their present forms of "Release" limiting their liability with respect to the carriage of the property referred to in section No. 1 of this order, and to substitute therefor the form herein prescribed until otherwise ordered by the Board.

3. That the Canadian Freight Classification, also, if necessary, any special tariffs affected by these provisions, be amended so as to conform to this order.

4. That General Order No. 136, dated 25th of March, 1915, is hereby rescinded.

H. GUTHRIE,
Chief Commissioner.

GENERAL ORDER No. 552

In the matter of the application of the Canadian Freight Association, under Section 322 of the Railway Act, for approval of proposed Supplement No. 9 to Canadian Freight Classification No. 18, on file with the Board under file No. 33365.106.

TUESDAY, the 17th day of March, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

Whereas notice has been given by the Canadian Freight Association in the *Canada Gazette,* as required by section 322 of the Railway Act, and copies of the said supplement furnished to the parties named in the General Orders of the Board Nos. 271, 348, 353, 469 and 471, with the request that their objections, if any, be filed with the Board within thirty days;

And whereas the only objection filed was by the United Grain Growers, Limited, Winnipeg, Manitoba, with respect to proposed change in carrier's liability covering household goods and settlers' effects when the company's form of release is signed by the shipper:

Upon reading the submissions filed and the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said proposed Supplement No. 9 to Canadian Freight Classification No. 18 be, and it is hereby, approved, subject to the following change, namely, Note 8, item 4, page 8, to be amended to read: "Household goods in lift vans exceeding 16 feet in length will be subject to carload ratings and minimum weight. Less than carload ratings will not apply."

H. GUTHRIE,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR JANUARY, 1936

Railway accidents	207,	with 14 persons killed	and 250 injured.
Railway accidents at highway crossings	15,	with 4 persons killed	and 25 injured.
	222	18	275

	Killed	Injured
Passengers	1	62
Employees	5	162
Others	12	51
	18	275

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents

Quebec

1 Auto Truck—Driver failed to stop for crossing. (No licence plate on truck.)

1 Snow-go—Driver mistook headlight on plough for other light. Licence Que. K-7.

1 Pedestrian—Walked under gates in lowered position, in front of train.

Ontario

5 Automobile—Ran into side of train. Licences, Ont. HF-10, S. Horton, 75 Lindsay St., Lindsay, Ont.; Ont. P-6779, K. C. Pearson, R.R. No. 1, Burgenville, Ont.; Ont. R-7554, Leo Bozoian, 157 Darling St., Brantford; Ont. O-9089, Wm. Thompson, 31 Britannia Ave., Hamilton; Ont. NX-49, A. Long, Wheatley, Ont.

1 Automobile—Auto driver failed to keep sufficient lookout for trains. Licence, Ont. P-3311, A. Blanchard, Grimsby, Ont.

2 Auto Truck—Ran into side of train. Licences, Ont. 63503-C, W. L. Robinson, R.R. 1, Canfield, Ont.; Ont. 45635-C, Geo. Hammett, Mt. Albert, Ont.

1 Auto Truck—Attempted to stop, but skidded onto track. Licence Ont. 47227-C, S. S. Harrison, 134 Rubridge St., Peterborough, Ont.

1 Auto Truck—Driver disregarded signals by wigwag, ran onto track ahead of train. Licence Ont. 10737-C, S. Doyle, Toronto, Ont.

Manitoba

1 Auto Truck—Driver failed to observe necessary precautions. Licence Man. PSV-585.

Saskatchewan

1 Horse-drawn vehicle—Drove onto track in front of train.

Of the fifteen accidents at highway crossings, four occurred at protected crossings and eleven at unprotected crossings. Nine of the accidents occurred during the daylight hours and six at night.

Ottawa, March 12, 1936.

APR 13 1936
UNIVERSITY OF TORONTO

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXVI | Ottawa, April 15, 1936 | No. 2

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Application Sutherland Wharf, Limited, for an Order under Section 256 requiring the Canadian Pacific Railway Company and the proposed Terminal Railway to provide a crossing as per plan attached from its wharf to Lot 7, Block 1, District Lot 184, in the City of Vancouver, B.C.

File 39429

JUDGMENT

COMMISSIONER STONE:

This is an application by the Sutherland Wharf, Limited, for an order requiring the Canadian Pacific Railway Company to provide a crossing at grade over the said railway from the applicants' wharf to lot 7, block 1, district lot 184. The cost of constructing the crossing to be borne and paid by the applicants.

The application recites in part:—

> "It is our intention to build a storage warehouse on lots 3 to 15, block 1, district lot 184, the first section of which will be on lots 5 to 8, inclusive, which we and an allied company own. Vancouver is deficient in water storage warehouses and this is the only vicinity in Vancouver where the Canadian Pacific Railway Company agreed to such crossings. The consideration paid to our predecessors was subject to this right of crossing. The consideration paid by us for this and the adjoining lot 8 with the right of crossing was ten times greater than other lots in the block are offered us at.
>
> "That at the location of our proposed crossing there could be nothing like a general crossing; it would be used only for goods to and from the warehouse and for excavating material for the warehouse.
>
> "The Terminal Railway is not built yet and we do not know if it will be built.
>
> "This crossing over the proposed Terminal Railway is absolutely necessary to our operation as a wharf as well as of general advantage to storage interests connecting to the crossing applied for over the Canadian Pacific Railway.
>
> "We wish to use the excavation material from the lots to further stabilize our wharf and reduce its fire rate."

When purchasing its right of way "through and over the" said lot 7, the Canadian Pacific Railway Company entered into an agreement dated September 26, 1888, with the then owners, Chas. T. Dupont and Peter C. Dunlevy. This agreement provided, *inter alia*,—

> "That the company will not oppose the construction by the said parties of the second part, their heirs or assigns, of a wharf or wharves in front of the said lots or any of them in case they shall obtain the necessary authority for the construction thereof and will not oppose the granting of such authority to them; and
>
> "The said parties of the second part, their heirs or assigns, shall have a right of way or rights of way from any wharf or wharves over the said line of railway in such manner as they may reasonably require subject to the approval as to the construction of every such way of the engineer of the said company appointed by them and the same shall be constructed by the said parties of the second part, their heirs or assigns, at their own expense."

Applicant company is the assignee of the said Dupont and Dunlevy and stand in their place.

In a later submission applicants stated:—

> "(1) It is the intention to excavate the bank from lot 3 to lot 15 inclusive, which will give reasonable vision in both directions, since a crossing at lot 7 is in the middle of the block;
>
> "(2) We will bear the cost of the removal of the bank on the railroad right of way as well as on our own lot; and
>
> "(3) It is essential to the successful operation of the waterfront warehouse that goods can be transported with dock equipment and that the warehouse have a level crossing to the roadway."

The railway company and the Vancouver Harbour Commission opposed a level crossing at the point in question.

The application as well as a joint application by Sutherland Wharf, Limited, and Vegetable Oils, Limited, for an order requiring the Terminal Railway Company as it is extended, or the Canadian Pacific Railway Company to permit their spur track on Burrard Inlet, running west from Nanaimo street, Vancouver, to be connected with the Terminal Railway as it is to be extended or the Canadian Pacific rails as shown on the plan; and directing the Vancouver Harbour Commissioners or the Canadian Pacific Railway Company to give service to them, were heard by the Board at a sittings held at Vancouver, B.C., on July 15, 1935. At this hearing it was anticipated that the parties would arrive at a mutual agreement and a day's adjournment was granted to enable them to confer. On the following day counsel for the Canadian Pacific Railway stated that a satisfactory arrangement had been made and the understanding was that consent minutes would be filed with the Board upon which the order could issue. Before the order issued, however, the Governor in Council by Order in Council, P.C. 2092, dated July 20, 1935, cancelled the lease to the Canadian Pacific Railway under which the Vegetable Oils, as sub-lessee, acquired title to its property. The effect of the cancellation was to hold up further action on trackage connection to the Vegetable Oils, Limited.

Upon its being represented to the Board that passage over the Vegetable Oils' tracks was necessary to serve applicants' plant, it was felt that until the Vegetable Oils position was cleared up and such tracks could be made available for use, it could not be definitely known whether the crossing applied for would be required.

Upon the receipt of further submissions the parties were advised that the Board was prepared to consider granting an order for a grade level crossing over the tracks of the Canadian Pacific Railway and right of way of the Vancouver Harbour Commission opposite lot 7, connecting applicants' wharf with

lot 7, as shown on plan and profile filed with the Board. The crossing to be protected by a watchman appointed and paid by the applicants, such protective service to be given whenever the crossing is being used.

The matter was then set down for hearing and heard at Vancouver, February 24, 1936. The same interests, namely, the applicants, Canadian Pacific Railway, and the Vancouver Harbour Commission, were represented at this hearing as appeared before the Board at the sittings in July, 1935.

Relying on the agreement of 1888 referred to by which, as successors in title to Messrs. Dupont and Dunlevy, they were assured of the crossing between their properties north and south of the railway tracks, applicants have expended over $141,000 in developing their properties for business purposes, and with their allied company also acquired additional lots on the south side of the track for the purpose of erecting a storage warehouse.

It is not proposed to use the crossing as a public highway, as in the case of Victoria Drive located a short distance west, over which there is considerable vehicular and pedestrian traffic, but that it is to be used exclusively as a private industrial crossing for the transfer of commodities between the two warehouses as well as for the removal of excavated material urgently required for the construction of the new storage warehouse south of the railway track; also for filling to stabilize the foundation of the transit warehouse for the applicant company, as well as filling to protect piles under this building and the proposed spur track from teredos attack, which can only be handled economically and with expediency over the proposed level crossing.

Applicants further submitted that a level crossing between their properties is essential for the proper functioning of anticipated business; that a subway would be too expensive and unsatisfactory from an operating standpoint, as it would entail steep approaches and be located approximately eight feet below high water level, and subject to leakage; that later, with increase in applicants' business an overhead crossing would be necessary to handle light package commodities, but that the heavier articles would, of necessity, have to be transferred between their warehouses at rail level, and when the overhead crossing was built it would reduce movements over the level crossing, and when crossing was not in use the doors of warehouses would be kept closed.

The railway company consents to an overhead crossing provided it is constructed in accordance with the clearance required by the Railway Act and the regulations of the Board and at the expense of the applicants. It strongly objects to a level crossing because of the very dangerous situation, it alleges, such a crossing would create. It points out that opposite lot 7 there are now four railway tracks and a crossover within yard limits upon which there is a heavy movement of railway traffic. Furthermore, there is a curvature in the track to the west and also east of the point of the proposed crossing, which would increase the danger to traffic crossing the railway tracks, and also that during many months of the year the visibility is poor because of prevailing fog. The railway company stated that the applicant company could not properly function without railway connection over the proposed spur of the Vegetable Oils, Limited, and questioned the necessity of a level crossing until the title and rights of that company had been decided.

Counsel for the Harbour Board opposes a level crossing on the ground that it would congest and delay through traffic on the paved roadway, particularly when they are off-loading ships to the east. He suggests a bridge or subway as the proper solution. He stated, however, that if a level crossing was to be given, it would have to be amply protected—" not only in regard to the present but for the future." He suggested that the protection should be some human agency. In support of this claim he filed the following census of traffic over the paved roadway:—

SUMMARY OF TRAFFIC, EASTBOUND AND WESTBOUND, ON COMMISSIONERS' STREET, BETWEEN VICTORIA DRIVE AND THE TERMINAL DOCK

Saturday, February 15, 1936: 9 A.M. to 5 P.M.—

Automobiles	237
Trucks	74
Bicycles, sidecars, etc.	33
Pedestrians	166

Monday, February 17, 1936: 9 A.M. to 5 P.M.—

Automobiles	240
Trucks	133
Bicycles, sidecars, etc.	28
Pedestrians	191

Statements filed show the following train movements in addition to switching movements made daily:—

Date Hour	Passenger and Mixed		Freight Transfer Switcher		Yard Engines Switching		Harbour Board	
Feb. from to	E/B	W/B	E/B	W/B	E/B	W/B	E/B	W/B
17 8-24-K	4	3	2	2	2	2	—	—
18 24-24-K	4	4	4	4	5	5	1	1
19 24-24-K	4	5	3	3	4	4	1	1
20 24-24-K	4	4	4	4	4	4	1	1
21 24-24-K	3	5	4	4	10	10	—	—
22 24-8-K	—	—	1	2	4	4	1	1

It was at first suggested that commodities would be moved over the crossing by electric motor trucks with trailers attached. Later applicants advised that two-ton motor trucks would be used instead. Doing away with trailers tends to minimize the danger of operating the crossing.

As noted above, the applicant company, relying upon the agreement for a crossing, has expended a large sum of money for the development of its industries. This vested interest should be recognized, and, unless there exists impelling reasons to the contrary, protected.

The decision in this matter turns upon the question whether operation of a level crossing at this point can be adequately protected.

After personally inspecting the locus, and making a careful study of the plans with the Board's Engineer, it is my opinion that if properly protected the hazards at the proposed crossing would not be greater than at the Victoria Drive crossing.

In the circumstances of this case I would grant the application for a level crossing to be constructed by the Canadian Pacific Railway Company. In case of dispute between the parties as to such construction, the same to be settled by the Board. The cost of construction and maintenance to be paid by the applicants. Applicants to provide at their own expense, two watchmen, with proper flagging equipment, to protect all movements over the crossing against rail and roadway traffic when used (*a*) in transferring excavated or construction material for the proposed new storage warehouse, and/or (*b*) in foggy weather. On other occasions one watchman to be provided. All trucks to come to a full stop before using the crossing. The Canadian Pacific Railway and the Terminal Railway, if and when the latter company operates at this point, to undertake, when not operating the crossing, that cars shall be kept at least fifty feet clear from each side of the crossing.

March 23, 1936.

The Chief Commissioner and Commissioner Stoneman concurred.

ORDER No. 52927

In the matter of the application of Sutherland Wharf, Limited, hereinafter called the "Applicant," for an Order requiring the Canadian Pacific Railway Company to provide and construct a crossing of its tracks at Lot 7, Block 1, District Lot 184, in the City of Vancouver, Province of British Columbia, as shown on the plan and profile on file with the Board under file No. 39429.

WEDNESDAY, the 25th day of March, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Vancouver, February 24, 1936, in the presence of counsel for the Canadian Pacific Railway Company and the Vancouver Harbour Commissioners and a representative of the applicant, and what was alleged,—

It is ordered:

1. That the Canadian Pacific Railway Company be, and it is hereby, authorized to construct a crossing of its tracks, at grade level, from the applicant's wharf to lot 7, block 1, district lot 184, in the city of Vancouver, province of British Columbia, as shown on the plan and profile on file with the Board under file No. 39429.

2. That the cost of constructing and maintaining the said proposed crossing be borne and paid by the applicant.

3. That the applicant provide, at its own expense, two watchmen, with proper flagging equipment, to protect all movements over the said crossing against rail and roadway traffic, when used (*a*) in transferring excavated or construction material for the proposed new storage warehouse, and/or (*b*) in foggy weather. On other occasions one watchman shall be provided.

4. That all trucks come to a full stop before using the crossing.

5. That the Terminal Railway, if and when it shall operate at this point, and the Canadian Pacific Railway Company undertake, when not operating the said crossing, to keep cars at least fifty feet clear from each side of the crossing.

6. That in case of dispute between the parties as to the construction of the proposed crossing, the same be settled by the Board.

H. GUTHRIE,
Chief Commissioner.

Application of the Canadian National Railways, under Section 165-A of the Railway Act, Section 2, Subsection 3, of the Canadian National-Canadian Pacific Act, 1933, and all other appropriate statutory provisions, for an Order granting leave to abandon the operation of a portion of the Lac Ste Anne Subdivision in the Province of Alberta, between Peace River Junction (Mile 31·0) and Darson Junction (Mile 63·6) a distance of 32·6 miles.
(File 39310.5)

Heard at Edmonton, Alta., February 28, 1936.

JUDGMENT

Commissioner Stoneman:

The Canadian National Railways apply, under Chapter 47 of the Statutes of Canada 1932-33, for the approval of the Board to the abandonment of operation of its Lac Ste Anne Subdivision, in the province of Alberta, between Peace River Junction (Mile 31·0) and Darson Junction (Mile 63·6) a distance of 32·6 miles.

Before the year 1933, unless there was a statutory or contractual provision requiring a railway company to operate its road, it was at liberty to abandon the whole or any portion of its line. The statute above referred to, which amends the Railway Act by adding section 165-A, provides that—

> "The company may abandon the operation of any line of railway with the approval of the Board, and no company shall abandon the operation of any line of railway without such approval."

Brief Historical Review

Opened for operation—1915.

Built under statutory authority granted in Canada, sections 9-10 Edward VII, Chapter 6, 1910, to the Canadian Northern Alberta Railway Company, which was acquired by the Canadian Northern Railway Company in July, 1914. Control of the latter passed to the Dominion Government in 1917; and, in conjunction with other Government Railways is operated under the title of the "Canadian National Railways."

The present train service between Peace River Junction and Darson Junction, as shown in Time-table No. 15, effective September 29, 1935, is as follows:—

Westbound Mixed Train No. 311, Tuesday Only,
Leave Peace River Junction 11.05 a.m., Arrive Darson Jct. 1.35 p.m.

Eastbound Mixed Train No. 312, Wednesday Only,
Leave Darson Jct. 9.15 a.m., Arrive Peace River Jct. 11.07 a.m.

The railway operating revenues for the year 1931 were $10,377; for the year ending September 31, 1933, they were $6,194; and for the year ending December 31, 1934, they were $3,895. The railway company's operating expenses (out of pocket only) for the same period were as follows: For the year 1931, $54,482; for the year ending September 31, 1933, $35,298; and for the year ending December 31, 1934, $29,291. The loss for this three-year period amounted to $44,105 in 1931, $29,104 in 1933, and $25,396 in 1934.

In a joint report made by the Engineering and Operating Departments of the Board, dated February 19, 1935, a description of the villages and tributary districts is given in detail, as follows:—

Alberta Beach.—This is a summer resort and mixed farming area, with a permanent population of between 50 and 60, and a summer population of between 800 and 1,000. Business establishments consist of a summer hotel, three stores, bakery, garage, barber shop, and school. About 81 families engaged in mixed farming are located in the surrounding area. Station facilities consist of one standard depot and stock-pen.

Lac Ste Anne.—Roman Catholic Shrine and Indian School, with small mixed farming area. Village population about twenty, not including Indian children attending Roman Catholic Mission. Business establishments consist of general store and post office, stopping house, one school, Roman Catholic Church and residence, and Roman Catholic Shrine, located about one mile from railway. About forty families are engaged in mixed farming in the tributary district. Station facilities consist of one station, loading platform, and stock-pen.

Darwell.—Small hamlet consisting of about five families, with two stores and post office. Between forty and fifty families on small mixed farms in tributary area. Station facilities consist of a station, loading platform, and stockyard.

Lake Isle.—One store and community hall. Population of hamlet about five. Approximately twenty-five farmers in this area engaged in mixed farming. Station facilities consist of a box-car body for a depot, stock-pen, and loading platform.

Magnolia.—Has a population of about twenty-five with two general stores, church and residence, community hall. Between forty and fifty farmers engaged in mixed farming in the tributary area. Station facilities consist of depot, stock-pen and loading platform.

Mixed farming on a small scale is the principal industry in the territory through which this line passes. The largest grain growing area is in the vicinity of Alberta Beach. There are no elevators on the line, and therefore most of the grain is hauled to Gunn Station on the Sangudo Subdivision—·5 miles east of Alberta Beach. Dairying is carried on to some extent, but the evidence is that this is either being shipped from stations on another line of railway, or taken to the creamery at Onoway. Live stock is produced to some extent, but very little is being shipped on this line. The evidence shows that small lots of hogs are trucked from the district; cattle of course can be driven either to the Sangudo or Wabamun Subdivision, with very little added expense or inconvenience.

The following is a summary of the distance, via existing roads to the nearest railway station, in the event of this application being granted:—

Alberta Beach.—Located on district main highway and also on provincial gravelled highway, would be 6·3 miles from the railway to Peace River Junction on the district main highway, approximately 9 miles from Peace River Junction if the provincial gravelled highway is followed, and 15 miles from Carvell Station on the Wabamun Subdivision in the south over provincial gravelled highway.

Lac Ste Anne.—Located on district main highway 10·9 miles from Peace River Junction, 22 miles from Gainsford near Darson Junction. The distance to Fallis Station on the Wabamun Subdivision would be 12 miles; 6 miles of this distance being by municipal highway.

Darwell.—Located on district main highway 17 miles from Peace River Junction and 16 miles from Gainsford. It is also situated on a district main road which runs north and south. The distance to Fallis Station on the south being 9 miles, and the distance to Glenevis Station on the north being 12 miles.

Lake Isle.—The distance to Gainsford by district main road is 10 miles and the distance to Fallis, 9½ miles, 6½ miles of which would be by municipal road.

Magnolia.—It is situated 2·2 miles from Darson Junction; nearest station by highway would be Gainsford, a distance of 3 miles.

The Large Green Block.—Shown on Exhibit No. 1, filed by the Canadian National Railways July 6, 1935. The Large Green Block on the north with a population of 218, would be 5½ miles by road to Sangudo on the north from the northwest corner of the block, and 11½ miles from the southeast corner. The centre of this block would be 19 miles via municipal road, from Fallis Station to Wabamun Subdivision.

Those representing the Alberta Beach summer resort say abandonment of this line will have a serious effect upon their business. They state they bought the lots, on which their layout is located, from the Canadian Northern Townsite Company, and that there was an understanding—but no written agreement —that the railway intended to continue operation. Therefore they feel that if the application is granted they should be compensated. Compensation of this nature is, of course, outside the jurisdiction of this Board. It will be noted that Alberta Beach is on a gravelled road; the distance from Edmonton is, approximately, 48 miles, and there is a daily bus service, during the summer months, as well as a trucking service.

The Roman Catholic Shrine, located approximately one mile from Lac Ste Anne Station, was dedicated to Ste Anne some fifty years ago, and pilgrimages are made to this Shrine on the last Wednesday and Thursday in July of each year. The first day has service for the Indian people, from the Indian Reserve, just north of the lake, and the second day for white people. From 1,000 to 2,000 pilgrims come to this shrine each year. Evidence shows that a very small percentage of the pilgrims travel by rail. Therefore abandonment of the line would have very little, if any, effect upon the shrine. Abandonment of the line will, as in all such cases, mean a longer haul to some of the settlers in the district, but I do not feel that the extra haul for the few affected can be considered a serious public inconvenience. The loss of the railway is such that I do not feel that continued operation is justified. I would allow the application—reserving any rights the interested parties may have, in the courts, in so far as compensation is concerned.

Ottawa, March 27, 1936.

The Chief Commissioner and Commissioner Stone concurred.

ORDER No. 52949

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 165A of the Railway Act, for approval of the abandonment of operation of a portion of the Lac Ste. Anne Subdivision, in the Province of Alberta, between Peace River Junction (Mileage 31·0) and Darson Junction (Mileage 63·6), a distance of 32·6 miles.

File No. 39310.5

MONDAY, the 30th day of March, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Edmonton, February 28, 1936, in the presence of counsel for the applicants and representatives of residents of Darwell, Lake Isle, and Alberta Beach, and what was alleged,—

It is ordered: That the abandonment of operation of a portion of the applicants' Lac Ste. Anne Subdivision, in the province of Alberta, between Peace River Junction (Mileage 31·0) and Darson Junction (Mileage 63·6), a distance of 32·6 miles, be, and it is hereby, approved; such approval to be without prejudice to the rights or remedies of the parties, if any, in the courts.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52893

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

THURSDAY, the 19th day of March, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

It is ordered: That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act, namely:—

Supplement No. 12 to Tariff C.R.C. No. E-1231.
Supplement No. 54 to Tariff C.R.C. No. E-1234.
Supplement No. 113 to Tariff C.R.C. No. E-1235.
Supplement No. 18 to Tariff C.R.C. No. E-1745.
Supplement No. 56 to Tariff C.R.C. No. E-1804.
Supplement No. 9 to Tariff C.R.C. No. E-1835.
Supplement No. 21 to Tariff C.R.C. No. E-1906.
Supplement No. 16 to Tariff C.R.C. No. E-2047.
Supplement No. 15 to Tariff C.R.C. No. E-2248.
Tariff C.R.C. No. E-2380.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52903

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

FRIDAY, the 20th day of March, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published to Fredericton, New Brunswick, in Supplement No. 32 to Tariff C.R.C. No. E-4742, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 32 to Tariff C.R.C. No. E-4742, approved herein, is 14½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52916

In the matter of the application of the Vancouver Harbour Commissioners, hereinafter called the "Applicants," for approval of Tariff C.R.C. No. B-2, covering the tolls to be charged in respect of the Second Narrows Bridge at Vancouver, British Columbia, formerly operated by the Burrard Inlet Tunnel and Bridge Company, on file with the Board under file No. 15732.8.

MONDAY, the 23rd day of March, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Vancouver, February 24, 1936, in the presence of counsel for and representatives of the applicants, the Montreal Trust Company, the City and District of North Vancouver, and the North Vancouver Board of Trade, and what was alleged,—

It is ordered: That the applicants' Tariff C.R.C. No. B-2, effective March 9, 1936, cancelling Tariff C.R.C. No. B-1, covering standard maximum tolls to be charged in respect of the Second Narrows bridge at Vancouver, in the province of British Columbia, on file with the Board under file No. 15732.8, be, and it is hereby, approved.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52921

In the matter of the application of the Express Traffic Association of Canada, by S. H. Bullett, Chairman, for permission to publish, on less than statutory notice, revised rates on ale, beer, and porter between points in the Province of Saskatchewan.

File No. 27612.131

FRIDAY, the 27th day of March, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon its appearing that arrangements have been made with the Liquor Control Board of Saskatchewan for the said revised rates, competitive with trucks, to be made effective as soon as possible,—

It is ordered: That the revised tariff on ale, beer, and porter, between points in the province of Saskatchewan, may be made effective on three days' notice.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52922

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for permission to cancel, on less than statutory notice, the rate on fertilizer and fertilizer material from Montreal, Quebec, to Quebec, Quebec, now shown in Supplement No. 31 to its Tariff C.R.C. No. E-4742.

File No. 27612.130

FRIDAY, the 27th day of March, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant company be, and it is hereby, granted leave to cancel, effective April 1, 1936, the rate on fertilizer and fertilizer material from Montreal, Quebec, to Quebec, Quebec, now shown in Supplement 31 to its Tariff C.R.C. No. E-4742.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52943

In the matter of the application of the Canadian Pacific Railway Company and the Canadian National Railways for permission to file, on less than statutory notice, a revised tariff or supplement to eliminate certain points at which free delivery cannot be arranged.

File No. 27612.132

TUESDAY, the 31st day of March, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that the Canadian Pacific Railway Company and the Canadian National Railways are unable to arrange with carters at Summerland, West Summerland, and Westbank, in the province of British Columbia, for delivery of less than carload traffic,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, permitted to file a new tariff cancelling Tariff C.R.C. No. W-3303; and that the Canadian National Railways be permitted to file a new supplement cancelling Supplement No. 17 to Tariff C.R.C. No. W-887, upon three days' notice, omitting Summerland, West Summerland, and Westbank, in the province of British Columbia, as free delivery points.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52953

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

FRIDAY, the 3rd day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

It is ordered: That the tolls published in the following tariffs, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement 15 to Tariff C.R.C. No. E-1226.
Supplement 114 to Tariff C.R.C. No. E-1235.
Supplement 115 to Tariff C.R.C. No. E-1235.
Supplement 31 to Tariff C.R.C. No. E-1238.
Supplement 10 to Tariff C.R.C. No. E-1835.
Supplement 40 to Tariff C.R.C. No. E-1247.
Supplement 25 to Tariff C.R.C. No. E-1911.
Supplement 26 to Tariff C.R.C. No. E-1911.
Supplement 22 to Tariff C.R.C. No. E-1974.
Supplement 17 to Tariff C.R.C. No. E-2047.
Supplement 16 to Tariff C.R.C. No. E-2248.
Tariff C.R.C. No. E-2386.
Tariff C.R.C. No. E-2387.

H. GUTHRIE,
Chief Commissioner.

GENERAL ORDER No. 553

In the matter of the General Order of the Board No. 468, dated March 12, 1929, prescribing the specifications for signals at highway crossings.

File No. 15382

THURSDAY, the 26th day of March, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading the submissions filed on behalf of the Pere Marquette Railway Company and the report and recommendation of the Division Engineer of the Board, concurred in by its Chief Engineer,—

It is ordered: That the said General Order No. 468, dated March 12, 1929, be, and it is hereby, amended by striking out paragraph 3 thereof and substituting therefor the following, namely:—

"3. That every highway crossing signal upon the line of any railway company subject to the legislative authority of the Parliament of Canada, installed for the purpose of protection, shall be efficiently maintained by the railway company upon whose line the protection is installed, and shall be inspected at frequent intervals, but the interval between such inspections shall not exceed a period of forty-eight hours, and the method of test shall be such as will indicate whether or not the signal is in good working order. If the highway crossing signal fails to operate, or operates continuously, a flagman shall be placed at such crossing at once, whose duty it shall be properly to protect the same until such highway crossing signal is repaired. Notice of such non-repair shall be given at once to the station agent nearest to such highway crossing signal, whose duty it shall be to report the matter at once to the department having charge of the operation and repair of such highway crossing signals."

H. GUTHRIE,
Chief Commissioner,

SUMMARIES OF ORDERS ISSUED BY THE BOARD OF RAILWAY COMMISSIONERS

52828. Mar. 3—Declaring C.N. Rys. crossing west of Jones Siding, Ont., protected to Board's satisfaction.

52829. Mar. 4—Authorizing C.P.R. to enter upon Lot 244, L'Annonciation, Que., to remove trees and brush obstructing view of crossing at mileage 93·57, Ste. Agathe Subd'n, Que.

52830. Mar. 4—Amending Order 16857, June 11, 1912, by striking out words "Five o'clock" in 12th line of operative part and substituting therefor the words "Seven o'clock"—*re* G.T.R. spur across Preston street, Ottawa, to premises of Export Lumber Co.

52831. Mar. 4—Directing Lake Erie and Northern Ry. to install automatic bell and wig-wag at crossing of Provincial Highway No. 24 at mileage 27·7 from Galt, Ont.

52832. Mar. 3—Authorizing Nipissing Central Ry. to move the station agent from Cheminis to Arntfield, Ont. (caretaker to be appointed at Cheminis).

52833. Mar. 7—Authorizing C.N. Rys. to issue supplement to correct errors in rates published in Supp. 11 to Tariff C.R.C. No. E-2304.

52834. Mar. 5—Declaring C.N. Rys. crossing, being second west of Glencoe, Ont., protected to Board's satisfaction.

52835. Mar. 5—Declaring the Pere Marquette Ry. crossing just east of platform at Wheatley Station, Ont., protected to Board's satisfaction.

52836. Mar. 5—Declaring that eastbound traffic at C.N. Rys. crossing at Highbury Ave., London, Ont., protected to Board's satisfaction.

52837. Mar. 9—Relieving C.P.R. from maintaining cattle guards at crossings at mileage 17·65 and 25·26, Walkerton Subd'n, Ont.

52838. Mar. 9—Directing Great Northern Railway until further order to stop its trains 355 and 360 on flag at Ocean Park, B.C.

52839. Mar. 9—Authorizing Dominion Dep't Public Works to construct highway crossing over C.P.R. west of Sharbot Lake Station, Ont.

52840. Mar. 10—Authorizing Dominion Dep't Public Works to construct highway crossing over C.P.R. at mileage 68, Nelson Subd'n, B.C.

52841. Mar. 9—Authorizing Northern Alberta Rys. to close crossings at mileage 177·7 and 178·6, and to construct crossings at mileage 177·9 and 177·2, Alta.

52842. Mar. 12—Relieving C.P.R. from maintaining cattle guards at five crossings on its Elora Subd'n, Ont.

52843. Mar. 10—Relieving C.P.R. from maintaining cattle guards at mileage 6·44, 9·90, 18·20, and 38·70, Saint John Subd'n, N.B.

52844. Mar. 10—Relieving C.P.R. from maintaining cattle guards at thirteen crossings on its Windsor Subd'n, Ont.

52845. Mar. 10—Relieving C.P.R. from maintaining cattle guards at five crossings on its St. Guillaume Subd'n, Que.

52846. Mar. 10—Declaring eastbound traffic at C.N. Rys. crossing of Keene road, east of Peterborough, Ont., protected to Board's satisfaction.

52847. Mar. 11—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in Supp. 41 to Tariff C.R.C. No. 851, filed by Dominion Atlantic Ry. under sec 9.

52848. Mar. 11—Declaring C.N. Rys. crossing at Yale road, mileage 72·24, Yale Subd'n, B.C., protected to Board's satisfaction so long as speed limitation of 10 miles an hour is in effect.

52849. Mar. 11—Relieving New York Central R.R. from maintaining cattle guards at mileage 3·17, 3·39, and 5·46, Tp. Stamford, Ont.

52850. Mar. 11—Relieving C.P.R. from maintaining cattle guards at crossings at mileage 32·2 and 36·45, Orford Subd'n, Ont.

52851. Mar. 11—Relieving C.P.R. from maintaining cattle guards at mileage 85·52, 86·89, and 87·90, Cartier Subd'n, Ont.

52852. Mar. 11—Relieving C.P.R. from maintaining cattle guards at crossing at mileage 6·17, Ville Marie Subd'n, Que.

52853. Mar. 11—Relieving C.P.R. from maintaining cattle guards at crossings at mileage 13·74 and 14·1, Hereford Subd'n, Que.

52854. Mar. 11—Relieving C.P.R. from maintaining cattle guards at crossing at mileage 42·58, Lachute Subd'n, Que.

52855. Mar. 11—Relieving New York Central R.R. from maintaining cattle guards at twenty-two crossings in Tp. Wainfleet, Ont.

52856. Mar. 11—Relieving New York Central R.R. from maintaining cattle guards at mileage 221·84 (Howard Ave.), Tp. Sandwich, Ont.

52857. Mar. 11—Relieving New York Central R.R. from maintaining cattle guards at ten crossings in Tp. Sandwich South, Ont.

52858. Mar. 11—Authorizing B.C. Dep't Public Works to construct highway crossing over C.P.R. at mileage 3·91, Rossland Subd'n, B.C.

52859 to 52877. Mar. 13—Directing New York Central R.R. to install double bells and wigwags in lieu of existing lightning flash signals at the following crossings: Simcoe street and Ontario avenue, Niagara Falls, Ont.; between Con. 8, Tp. Townsend, and Con. 8, Tp. Windham; between Cons. 3 and 4, Tp. Moulton, Ont.; Stanley street, Montrose, Ont.; McLaughlin road, 0·64 mile east of Attercliffe, Ont.; Young street, 1·98 mile east of Attercliffe, Ont.; Darling road, 1·96 mile east of Canfield, Ont.; Robinson road, Attercliffe, Ont.; Town Line road between Tps. Crowland and Willoughby, Ont.; Huron and Erie streets, Niagara Falls, Ont.; Morrison street, Niagara Falls, Ont.; Eastwood avenue, Niagara Falls, Ont.; Town Line road just east of Townsend Station, Ont.; Moote road, 1·39 mile west of Attercliffe, Ont.; Clemens Haugh road, east of Stevensville, Ont.; Hawtrey road, just west of station at Hawtry, Ont.; side road 0·11 mile west of Windham, Ont.;- Diltz road, 0·93 mile east of Attercliffe, Ont.; Lincoln road, 1·73 mile east of Welland, Ont.

52878. Mar. 13—Authorizing C.P.R. to construct additional trackage to serve Pacific Coast Terminals at New Westminster, B.C.

52879. Mar. 14—Authorizing C.P.R. to use and operate bridge across McKenzie street, Woodbridge, Ont.

52880. Mar. 13—Authorizing C.P.R. to construct spur to serve Manitoba Penitentiary at Stony Mountain, Man.

52881. Mar. 14—Declaring C.N. Rys. crossing of Dalhousie street, Brantford, Ont., protected to Board's satisfaction so long as speed limitation of ten miles an hour is in effect.

52882. Mar. 14—Approving and authorizing clearance of warehouse located on C.P.R. branch line serving Macdonalds Consolidated, Limited, Calgary, Alta.

52883. Mar. 13—Authorizing Great Northern Ry. to discontinue operation of its gas-electric car running daily between the International Boundary and Fernie, B.C.

52884. Mar. 16—Directing C.P.R. to install automatic bell and wigwag at crossing at mileage 93·1, Red Deer Subd'n, Red Deer, Alta.

52885. Mar. 14—Directing that 40 per cent of cost of installing bells and wigwags at crossing of Clifton Hill street, Niagara Falls, Ont., by New York Central R.R., be paid out of the Railway Grade Crossing Fund.

52886. Mar. 18—Declaring C.P.R. crossing immediately south of Chatsworth Station, Ont., protected to Board's satisfaction.

52887. Mar. 17—Authorizing Quebec Dep't of Roads to construct an overhead crossing across C.N. Rys. at Bridge street, Bromptonville, Que.

52888. Mar. 17—Authorizing Alberta Dep't of Public Works to construct highway crossing over C.P.R. in Peigan Indian Reserve No. 147, just east of Brocket Siding, mileage 51·6, Crowsnest Subd'n, Alta.

52889. Mar. 18—Relieving New York Central R.R. from maintaining cattle guards at crossing of Town Line road, Tp. Willoughby, Ont.

52890. Mar. 18—Relieving New York Central R.R. from maintaining cattle guards at eight crossings in Tp. Maidstone, Ont.

52891. Mar. 18—Relieving C.P.R. from maintaining cattle guards at mileage 21·4, 21·5, 21·9, St. Mary's Subd'n, Ont.

52892. Mar. 14—Relieving C.P.R. from maintaining cattle guards at six crossings on its Hamilton-Goderich Subd'n,Tp. Hullett, Ont.

52893. Mar. 19—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in tariffs filed by C.N. Rys. under sec. 3.

52894. Mar. 19—Approving and authorizing clearances at Montreal and Southern Counties Ry. spur serving Bennett Limited at Chambly, Que.

52895. Mar. 19—Authorizing C.N. Rys. to establish sight lines at crossing of No. 8 Highway at McGivney Station, N.B.

52896 to 52902. Mar. 20—Authorizing C.P.R. to use and operate the following subways at Toronto, Ont.: Christie street, Ossington avenue, Davenport road, Keele street, King street, Howland avenue, and Queen street.

52903. Mar. 20—Approving under Maritime Freight Rates Act., sec. 3, subsec. 3, toll published to Fredericton, N.B., in Supp. 32 to Tariff C.R.C. No. E-4742 filed by C.P.R. under sec. 9.

52904. Mar. 20—Relieving C.P.R. from maintaining cattle guards at first crossing east of Rock Forest Station, Que.

52905 to 52909. Mar. 20—Authorizing C.P.R. to use and operate the following subways at Toronto, Ont.: Bathurst street, Dovercourt road, Spadina avenue, Yonge street, and Avenue road.

52910. Mar. 19—Authorizing C.N. Rys. to remove station agent at Hawkeston, Ont. (caretaker to be appointed).

52911. Mar. 21—Declaring C.P.R. crossing about one mile west of Hall's Station, Ont., protected to Board's satisfaction.

52912. Mar. 21—Declaring C.N. Rys. crossing of Victoria avenue, Fort William, Ont., satisfactorily protected so long as speed limitation of ten miles an hour is in effect.

52913. Mar. 21—Authorizing C.P.R. to use and operate subway at Shaw street, Toronto, Ont.

52914. Mar. 21—Authorizing city of Sudbury, Ont., to construct highway crossing over C.P.R. at Regent street, Sudbury, Ont.

52915. Mar. 21—Authorizing C.N. Rys. to remove station agent at Excel, Alta. (caretaker to be appointed).

52916. Mar. 23—Approving Vancouver Harbour Comm'rs' Tariff C.R.C. No. B-2, cancelling Tariff C.R.C. No. B-1, covering standard maximum tolls to be charged in respect of Second Narrows Bridge at Vancouver, B.C.

52917. Mar. 24—Refusing application of C.P.R. for an order directing Alberta Dep't Public Works to pay to it the amount is has expended in replacing upper layer of planking of overhead bridge across road allowance between Secs. 23 and 24-5-6 W4M., Alta.

52918. Mar. 24—Authorizing Alberta Dep't Public Works to construct highway crossing over C.N. Rys. in NW¼ Sec. 8-46-23 W5M., Alta.

52919. Mar. 24—Relieving C.P.R. from maintaining cattle guards at crossings at mileage 79·3, 83·4, 85·5, and 86·6, Winchester Subd'n, Ont.

52920. Mar. 24—Authorizing C.N. Rys. to construct crossing between Lots 10 and 11, Con. 1, Lake Erie, Tp. Bertie, Ont.

52921. Mar. 27—Directing that Express Traffic Association revised tariff on ale and beer between points in Saskatchewan may be made effective on three days' notice.

52922. Mar. 27—Authorizing C.P.R. to cancel, effective April 1, 1936, rate on fertilizer and fertilizer material from Montreal to Quebec now shown in Supp. 31 to Tariff C.R.C. No. E-4742.

52923. Mar. 24—Authorizing C.N. Rys. to remove station agent at Gilroy, Sask. (caretaker to be appointed).

52924. Mar. 24—Refusing application of C.N. Rys. to remove the station agent at Lawson, Sask.

52925. Mar. 25—Refusing application of C.N. Rys. to remove the station agent at Hardy, Sask.

52926. Mar. 24—Refusing application of C.N. Rys. to remove the station agent at Corning, Sask.

52927. Mar. 25—Authorizing C.P.R. to construct a crossing of its tracks from wharf of Sutherland Wharf, Limited, to Lot 7, Block 1, Dist. Lot 184, Vancouver, B.C.

52928. Mar. 26—Declaring C.P.R. crossing just west of Islington Station, Ont., protected to Board's satisfaction.

52929. Mar. 26—Authorizing C.N. Rys. to reconstruct overhead bridge at mileage 63·6, Cascapedia Subd'n, Que.

52930. Mar. 27—Amending Rules for Government of New York Central R.R. by striking out words "Lunar white" at bottom of page 64 and substituting therefor the word "Blue."

52931. Mar. 26—Approving Supp. 5 to service station contract between Bell Telephone Co. and Byron Telephone Co., Ltd.

52932. Mar. 26—Authorizing C.N. Rys. to construct highway crossing on Lot 24, between Ranges 3 and 4, Tp. Privat, Co. Abitibi, Que.

52933. Mar. 26—Authorizing C.N. Rys. to construct highway crossing on Lot 12, Range 2, Tp. Privat, Co. Abitibi, Que.

52934. Mar. 26—Authorizing C.N. Rys. to construct highway crossing on Lot 16, between Ranges 1 and 2, Tp. Privat, Co., Abitibi, Que.

52935. Mar. 27—Refusing application of C.N. Rys. for leave to remove station agent at Elmira, P.E.I.

52936. Mar. 27—Authorizing C.N. Rys. to remove station agent at Point du Chene, N.B. (caretaker to be appointed).

52937. Mar. 28—Authorizing C.N. Rys. to construct spur to serve J. Kendle & Co., across Lyons avenue, Tp. York, Ont.

52938. Mar. 26—Directing C.N. Rys. to establish and maintain sight lines at crossing of Highbury avenue, London, Ont.

52939. Mar. 28—Authorizing city of Montreal to widen St. Henry Place crossing over C.N. Rys. and make certain alterations in gates and tracks thereat.

52940. Mar. 27—Apportioning cost of subway under C.P.R. at Portage avenue, Winnipeg, Man., between city of Winnipeg, C.P.R., and Winnipeg Electric Co.

52941. Mar. 27—Relieving New York Central R.R. from maintaining cattle guards at seven crossings in Tp. Moulton, Ont.

52942. Mar. 27—Relieving New York Central R.R. from maintaining cattle guards at six crossings in Tp. Seneca, Ont.

52943. Mar. 31—Authorizing C.P.R. to file new tariff concelling Tariff C.R.C. No. W-3303, and C.N. Rys. to file new supplement cancelling Supp. 17 to Tariff C.R.C. No. W-887, omitting Summerland, West Summerland, and Westbank, B.C., as free delivery points.

52944. Mar. 31—Declaring C.N. Rys. crossing of St. Johns highway between Brosseau and Lacadie, Que., protected to Board's satisfaction.

52945. Mar. 30—Refusing application of C.N. Rys. for leave to remove station agent at Tusket, N.S.

52946. Mar. 30—Approving proposed changes to interlocker at crossing of C.P.R. and C.N. Rys. at Regina, Sask.

52947. Mar. 28—Authorizing Niagara, St. Catharines and Toronto Ry. to remove interlocking plant at crossing of its railway by Welland Ship Canal Construction Ry. of Dep't Rys. and Canals at Lake Shore road, Port Weller, Ont.

52948. Mar. 30—Approving Supp. 1 to agreement between Bell Telephone Co. and Ont. Dep't Lands and Forests.

52949. Mar. 30—Approving abandonment of operation of Lac Ste. Anne Subd'n, C.N. Rys., between Peace River Junction and Darson Junction, Alta.

52950. Mar. 28—Directing C.P.R. to establish sight lines at crossing 2·7 miles west of Kenilworth Station, Ont.

52951. Mar. 31—Authorizing Kent Coal Co., Ltd., to mine coal under right of way of C.N. Rys. in SW¼ Sec. 30-52-23 W4M., Alta.

52952. April 2—Declaring C.N. Rys. crossing third west of Middlemiss, Ont., protected to Board's satisfaction.

52953. April 3—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in tariffs filed by C.N. Rys. under sec. 3.

52954. April 1—Refusing application of C.N. Rys. for leave to remove station agent at Huntoon, Sask.

52955. April 2—Authorizing B.C. Dep't Public Works to construct two crossings over C.N. Rys.: one 1,000 feet east of C.N. Rys. depot at Kamloops, and one over C.N. Rys. North Kamloops spur, on north side of South Thompson river, 2·83 miles from Kamloops.

52956. April 1—Authorizing C.P.R. to reconstruct and relocate station building at Meath Park, Sask.

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXVI Ottawa, May 1, 1936 No. 3

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

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Application of the Vancouver, Victoria and Eastern Railway and Navigation Company, under section 165A of the Railway Act, for permission to abandon the portion of its line of railway from the Town of Princeton, in the Province of British Columbia, southerly to the International Boundary, a distance of 58·40 miles.

File No. 33882

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER:

This application was made by the Vancouver, Victoria and Eastern Railway and Navigation Company for approval of the Board of the abandonment of the company's line of railway from Chopaka, a station upon the international boundary between Canada and the United States, to Princeton, in the province of British Columbia, a distance of 58·4 miles.

Counsel appeared for the applicant company in support of the application. The application was opposed by counsel representing the province of British Columbia, also by counsel representing the Hedley-Mascott Mining Company, Limited, the Kelowna Exploration Company Limited, the Hedley Amalgamated Gold Mines Limited, and also by a number of representatives of various Fruit Growers' Organizations and other business interests in the community.

The line of railway which is the subject-matter of this application forms part of the applicant company's system of railways in British Columbia. The company was incorporated by Cap. 75 of the Statutes of British Columbia, 1897; and by a statute of the Dominion of Canada, Cap. 89, passed in the year 1898, the company was declared to be a work for the general advantage of Canada.

The original undertaking of the company contemplated the construction of a railway from Chopaka on the international boundary northerly to Brookmere, in the province of British Columbia, a distance of 96·66 miles. In the year 1907 a line had been constructed from Oroville, in the state of Washington, to Chopaka, and at a point at or near Oroville a connection was made with the line of the Great Northern Railway Company in the state of Washington. The distance from Chopaka to Oroville is about 21 miles. In the year 1907 the applicant company constructed its railway from the boundary to Keremeos, a distance of 20·33 miles, and in the year 1909 the line was completed to

Princeton, a distance of 58·4 miles from the boundary. In 1915 the line was further extended to Brookmere. However, that portion of railway between Princeton and Brookmere, 37·47 miles, was subsequently leased by the applicant company to the Kettle Valley Railway Company and is not involved in the present application.

The line of the Vancouver, Victoria and Eastern Railway and Navigation Company which is the subject of this application, follows generally throughout the Similkameen Valley and from south to north passes through Cawston, Keremeos, Hedley and Princeton, as well as some other small hamlets which constitute stopping places upon the line. The present application for abandonment of line extends the whole distance from the international boundary to Princeton, a distance of 58·4 miles.

Princeton is located upon the line of the Canadian Pacific Railway Company and has a population of about 1,500 people. Hedley is about 20 miles south of Princeton and has a population of approximately 700, or perhaps a little less at the present time. Eighteen miles south of Hedley are Keremeos and Cawston with a combined population of about 850. The population of the other small settlements or stations is comparatively small.

In the spring of 1934 considerable damage was done to the railway at a point between Hedley and Princeton by floods. A portion of the roadbed was seriously injured and some bridges washed away or rendered unsafe for railroad traffic. An application was made to the Board by the applicant company in the year 1934 for permission to discontinue its service between Keremeos and Princeton, and to reduce its service between Keremeos and the international boundary to a bi-weekly service. After hearing the above application an order was made by the Board, No. 51690, directing the applicant company to re-establish and maintain a regular scheduled train service between the international boundary and Princeton at least semi-weekly from June to November, and weekly for the remainder of the year.

Order No. 51690 was subsequently amended by Order No. 52048, which provided that the time for carrying out the provisions of Order No. 51690 should be extended until the 15th June, 1936, but in the interval the applicant company has made the present application to the Board for approval of the abandonment of its whole line from the international boundary to Princeton.

Since the damage to the railway caused by flooding in March, 1934, the line between Hedley and Princeton has not been operated.

From what was disclosed upon the hearing of the application it appears that the territory traversed by the railway between Chopaka and Keremeos is not thickly settled although there is some sheep farming in the area lying to the southwest of Keremeos. In the vicinity of Keremeos and Cawston there is a large area of agricultural land well adapted to fruit growing and general agricultural production, including sheep and cattle raising. This area is said to comprise 50,000 acres.

Prior to the construction of the railway there was but little settlement in this area. From 50 to 100 settlers is the estimate which has been given, while at the present time fruit growing and stock raising are carried on upon a fairly extensive scale. Representations were made at the hearing by a number of persons interested in fruit growing in the district, among others by the Keremeos Growers' Co-Operative Association, by Sales Service Limited, and by the Associated Growers of British Columbia Limited. Statements were submitted showing the carload shipments of fruit by the Associated Growers of British Columbia Limited from Keremeos station over the applicant company's railway for the years 1926 to 1935, inclusive. This statement is as follows:—

	Carlots		Carlots
1926	102	1931	68
1927	54	1932	94
1928	119	1933	89
1929	73	1934	109
1930	119	1935	99

A further statement compiled from the Fruit Inspection Branch of the Department of Agriculture was submitted for the same years, 1926 to 1935 inclusive, showing the annual commercial production of fruit from the Cawston-Keremeos district, which statement is as follows:—

	1926	1927	1928	1929	1930
Apples.. .. ..Bxs.	93,350 (124 cars)	48,481 (64 cars)	113,610 (151 cars)	79,549 (106 cars)	128,991 (172 cars)
Crabapples.. .. ..Bxs.	949	353	434	209	486
Pears.. .. ..Bxs.	3,883	1,727	1,540	1,680	3,717
Plums.. .. ..Cts.	2,473	1,056	667	1,002	676
Prunes.. .. ..Cts.	1,273	1,415	2,262	1,508	881
Cherries.. .. ..Cts.	2,004	114	1,919	896	408
Peaches.. .. ..Cts.	3,241	15	837	2,037	1,052
Apricots.. .. ..Cts.	2,325	8	4,782	1,269	1,253

	1931	1932	1933	1934	1935 *
Apples.. .. ..Bxs.	72,075 (96 cars)	115,858 (154 cars)	131,699 (175 cars)	167,754 (223 cars)	121,000 (161 cars)
Crabapples.. .. ..Bxs.	261	20	244	15	150
Pears.. .. ..Bxs.	2,970	3,320	5,976	4,933	2,500
Plums.. .. ..Cts.	509	663	510	500	600
Prunes.. .. ..Cts.	445	1,016	1,116	1,290	900
Cherries.. .. ..Cts.	354	740	716	474	500
Peaches.. .. ..Cts.	316	754	399	628	100
Apricots.. .. ..Cts.	1,900	1,038	47	3,802	1,500

* Estimated Figures.

From this statement it is apparent that the production of apples increased from 93,350 boxes in 1926 to 167,754 boxes in 1934, or an increase of 80 per cent. Apple production decreased somewhat in 1935. Actual shipments of the 1935 crop up to 15th February, 1936, amounted to 150,136 boxes, in addition to which 50,000 boxes were destroyed by frost during the autumn of 1935. From 80 per cent to 85 per cent of these apples are for export to Great Britain. They are shipped from Keremeos to Oroville thence over the Great Northern Railway to ocean port.

Considerable irrigation work has been done in this district. 1,540 acres are now under various irrigation schemes and up to the present time there has been an expenditure of $51,000 upon irrigation in the Keremeos district. Fruit land in the vicinity is held at a high price. While no recent sales of orchard land have been made, as much as $850 per acre was paid for apple orchards a few years ago. There is said to be an area of 5,100 acres suitable for orchards.

The total acreage of fruit land under production in this district was 692 acres last year, and in addition thereto 121 acres have been planted during the past five years of which 78 acres are in apples. There is a warehouse adjacent to the station at Keremeos. This warehouse is the property of the fruit growers of the district. In this warehouse grading, packing and shipping take place.

It is asserted by the fruit growers that the withdrawal of present railway facilities will prove disastrous to the fruit growing industry in this locality. If the railway is abandoned, shipments of fruit will have to be hauled by motor-truck or wagon about 28 miles over a mountainous road to Penticton. It is claimed that this haulage will materially increase the cost of transportation and will also involve considerable risk of damage to the fruit both on account of frost and also through the unsatisfactory condition of the roads over which the fruit must pass.

There is also in the Cawston-Keremeos district a large area of grazing land where cattle and sheep raising are carried on to some extent. Mr. H. Tweddle of Keremeos appeared at the hearing on behalf of the Keremeos Cattle Breeders' Association. This association has some 33 members owning approximately 3,000 head of cattle. Mr. Tweddle has a farm of 2,250 acres. Of this land 450 to 500 acres are under cultivation, and he also has a herd of 475 cattle. He personally buys and sells cattle and at times his herd is very much larger than

the above figures. Mr. Tweddle has resided at Keremeos for 36 years and has knowledge of the conditions existing in that country before the advent of the railway.

Before the construction of the railway, cattle had to be driven long distances to shipping points and as a result lost a good deal of weight during the drive. In recent years, prior to the washout in March, 1934, between Hedley and Princeton, practically all cattle have been shipped from Keremeos. There would only be a short drive from the range to the station. Since the washout cattle have had to be driven to Princeton, a distance of about 35 miles, or to Okanagan, a distance of about 42 miles, for shipment by rail. It is claimed that these long drives prior to shipment result in serious loss of weight in the animals. In the opinion of Mr. Tweddle this shrinkage in weight means the difference between profit and loss on the shipment.

According to a statement filed by the applicant company the carlot shipments of livestock from Keremeos since 1928 have been as follows:—

	Cars		Cars
1928	33	1932	22
1929	29	1933	15
1930	26	1934	7
1931	16		

The decline in 1934 was no doubt attributable to the break in the railway between Hedley and Princeton. Mr. Tweddle states that in 1935 he shipped 21 cars of cattle of which 14 were shipped from Princeton and 7 from Okanagan.

There is also some sheep farming on land to the southwest of Keremeos. Mr. L. Newbeg has a sheep farm of 1,400 acres, for which he paid $40,000 in 1920. He has also some Government range land. He ships his produce from Keremeos to Princeton over the applicant company's railway, thence via Canadian Pacific Railway to Vancouver. Since the railway service between Hedley and Princeton was discontinued in 1934, he has only shipped one carload from Princeton. This lot consisted of 240 sheep which were carried by truck to Princeton at a cost of $60. He found he could not continue to ship under such conditions. He states that if he is deprived of railway service to Princeton he cannot ship without loss. Another farmer by the name of Graham has 3,000 sheep in the same neighbourhood, and it is intimated that he also will be in the same difficult position if the railway line between Keremeos and Princeton is not maintained.

At Keremeos station there has existed for some time two canning or packing plants, one the property of Canadian Canners Limited, and the other known as the Keremeos Packing Plant. Both of these industries have been closed since 1930. It may be that the Keremeos Packing Plant has been permanently closed, but the plant owned by the Canadian Canners has only been closed temporarily on account of the depression, as stated by Mr. P. F. Ereaut, the supervisor of the company. Mr. Ereaut is in charge of eight canning plants in the province of British Columbia owned by the above company. The other plants of this company are situated at Penticton, Oliver, two plants at Kelowna, Mission and Vancouver. The company's investment in the Keremeos plant according to the appraised value upon a replacement valuation is $55,000, and the book value according to the same appraisal is $31,000. The supervisor intimated that the Keremeos plant had been closed on account of the business depression, as well as a number of other plants of the company, but he also intimated that while the eight plants under his supervision had been closed in 1930, one had been opened in 1931 and another in 1932, and he expected that in the future they would have all plants operating again. The Keremeos plant is erected on the station ground of the applicant company.

In the last two years of operation the Canning Company spent considerable amounts on its purchases and on freight. In 1929 the company spent

$38,329 on the pack and $9,853 on freight. In 1930 it spent $34,113 on the pack and $9,017 on freight. These figures for freight included both outbound and inbound freight.

The company has used as much as 400 tons of coal a year at its Keremeos plant. This coal in the past was all brought from Princeton to Keremeos at $1.50 per ton freight rate. It was stated that if the coal had to be brought from Fernie it would cost $4.20 per ton, which would make the price prohibitive, but coal might be brought by truck from Princeton for less than $4.20 per ton.

The canning company's shipments all go to Alberta and southwestern Saskatchewan, and in order to reach these points shipments must be made from Keremeos to Princeton on the applicant company's line and thence easterly upon the Canadian Pacific Railway. According to the statement of the supervisor it would be impossible for this company to carry its goods to Princeton by truck. The cost of trucking would be prohibitive, and unless traffic on the railway is continued it is very doubtful if the company can carry on its plant at Keremeos.

Figures submitted by the applicant company in regard to the quantity of canned goods shipped over its line show the following carloads from 1928:—

FROM KEREMEOS TO PRINCETON

	Cars		Cars
1928	23	1931	8
1929	9	1932	2
1930	32		

For the remaining three years no shipments of canned goods are shown.

The representative of Canadian Canners was hopeful that the Keremeos plant would again be opened and in position to do business, but he stated that the maintenance of railway communication between Keremeos and Princeton was absolutely essential to the operation of this plant.

In the vicinity of Hedley there exists a mineralized area of considerable extent in which mining development has been in progress for a good many years. Within a radius of six miles there are five mines in various stages of production and development. Among these mining projects there is the Kelowna Exploration Company, formerly the Nickel Plate Mine, which is now operating and producing. There is also the Hedley-Mascott mine which is now engaged in the construction of a mill preparatory to shipping concentrates. There is also the Hedley Amalgamated Gold Mines Limited, which is actively engaged in development. The Hedley Stirling and the Hedley Gold Mountain Mines, up to the present time have been engaged largely in exploration work on their properties. South of Hedley, in the neighbourhood of Keremeos, there is also a mine known as the MacSiccor mine which is operating to some extent at the present time and which shipped about 100 tons of ore last year. All of these projects are located within reasonable distance, say from one to three miles, from the applicant company's line of railway and, if successful, would utilize the present railway facilities to a very large extent. It is pointed out by representatives of the railway that the result of these mining ventures is purely a matter of conjecture, and is, as yet, too uncertain to afford any reasonable expectation of increased railway shipments in the future. Be that as it may, important development is now taking place and substantial expenditure of money is now being made upon some of these mining properties, and shipping facilities form a very important element in the situation.

The Mill Superintendent of the Hedley-Mascott Mine gave evidence at the hearing that this mine was situated about 1½ miles east of Hedley. It has a large acreage and at the present time has five years of ore blocked out at the rate of 150 tons per day. He stated that this ore has an ascertained value of ·45 ounce of gold per ton. Since the spring of 1935 the company has expended

between $70,000 and $80,000 in cash upon development. The company has driven a 2,400-foot tunnel, and has now upon the property a compressor plant, an aerial train, a 150-ton flotation mill, and the mill equipment is all practically installed. He states that it will operate to capacity during the coming summer. He estimates that this will produce 450 to 550 tons of concentrates per month for shipment over the applicant company's railway and over the Great Northern Railway from Hedley to Tacoma, in the State of Washington, where the only smelter which can treat this kind of concentrates is located. At present there are 77 men employed at this mine.

The Manager of the Kelowna Exploration Company Limited gave evidence in regard to his company. This company now owns and operates the former Nickel Plate Mine which began operation some 35 years ago. The Kelowna Exploration Company also owns the Hedley Gold Mining property which it acquired in 1934 upon an option taken in 1932. Up to December 31, 1935, this company has expended upon plant and development $472,686.09. This money has all been expended since 1932. This company has been in active operation for some time. After treating the ore in its own plant as far as possible to do so, the precipitates are shipped by express to New Jersey and the concentrates are shipped to the smelter at Tacoma over the applicant company's railway and over the Great Northern Railway. Exhibit No. 13 filed by this company shows the total freight shipments over the above lines of railway for 11 months ending December 31, 1935. This statement shows a total of incoming freight of 951 tons and a total shipment of concentrates of 3,217 tons, or a grand total of 4,169 tons. In addition to freight shipments this company paid $3,560.70 for express shipments of precipitates to New Jersey. The amount of freight charges paid by the company to the railway on inbound freight was $9,359.75 and upon shipments of concentrates $16,488. (See Exhibit 14). At the present time this company has 160 men employed at an average wage of $4.30 per day. It claims to have five years ore blocked out for a present capacity of 200 tons per day. This ore should produce from 10 to 15 tons of concentrate per day, which should result in freight shipments of about 400 tons per month, or an average of 10 cars per month. Shipments of this company for the past 11 months ending December 31 last amounted to 80 cars.

Mr. Frank Parsons, Secretary-Treasurer of the Hedley Amalgamated Gold Mines Limited, gave evidence that this company was incorporated in 1934. The mine is situated upon the railway about one mile west of Hedley station. This company has already expended $85,000 in cash upon development work. It has run a tunnel of 800 feet and another of 300 feet. The company expects to erect a new mill during the coming summer. It now employs 25 men and expects to employ 100 men upon completion of the mill. The mill will have a capacity for 200 tons per day, which should produce 10 tons of concentrate per day for shipment to Tacoma. All the company's plans have been based upon continued railway facilities for these shipments from the mine to the smelter.

I have gone into some details of production and shipment in regard to the three companies above named, for the purpose of showing the present situation in regard to mining operations and something of the possibilities of the future in the Hedley district. It is only necessary at this time to mention that there are two or three other mining companies in the district, but these have not yet reached that period of development which would enable one to speak with any degree of certainty as to what the future may have in store for them.

The mining companies through their representatives insist that railway facilities as they now exist are essential to the successful operation of their mines. If abandonment should take place these mining companies will be compelled to ship their concentrates by truck from the various mining properties

to Princeton over a road which has been described as difficult and unsatisfactory for the purpose of trucking heavy loads. It was stated in evidence that the additional cost of this trucking would be at least $2.10 per ton. The railway freight rate from Princeton via the Canadian Pacific Railway to Tacoma is the same as the rate from Hedley south via the Great Northern Railway to Tacoma, so that the difference in cost of transportation would be the additional amount which would have to be paid for trucking between the mines and Princeton. The mine owners assert that this additional cost would place them at a grave disadvantage and involve their companies in serious loss.

The applicant company bases its application upon the ground that its operations for many years have been carried on at a heavy loss, and it also alleges that by reason of increased Customs tariffs imposed both in Canada and in the United States since the construction of the line these losses have proved greater than otherwise would have been. It also alleges that the revenue accruing from the operation of this line does not justify its continuance. It further states that the whole capital stock of the applicant company save a few shares for the qualification of directors is owned by the Great Northern Railway Company, a foreign corporation, the Head Office of which is at St. Paul, U.S.A.; that from its inception down to the present time the applicant company has been wholly financed by money supplied by the Great Northern Railway Company. That the applicant company owns no rolling stock or equipment save a few ore and water cars and one passenger car, and is entirely dependent upon the Great Northern Railway Company for the supply of same to enable it to operate its line. It also asserts that it has always been dependent upon the Great Northern Railway Company for financing its losses from operation, and that it is now heavily indebted to the Great Northern Railway Company in respect of advances made over a long period of years. It is also stated in the application that the Great Northern Railway Company proposes to abandon its line of railway from the International Boundary south to Oroville, a distance of 20·71 miles, where it connects with the main line of the Great Northern Railway, and that this abandonment when it takes place will sever the connection heretofore existing between the applicant company's line of railway in Canada and the Great Northern Railway in the State of Washington.

A formal notice has also been served upon the applicant company by the Great Northern Railway Company dated July 31, 1935, and received by the applicant company on August 31, 1935, in which the Great Northern Railway Company demands the return of all locomotives, cars, equipment and other property of the Great Northern Railway Company upon the line of railway between Princeton and the international boundary. Specific notice has also been given to the applicant company by the Great Northern Railway Company that the Great Northern Railway Company would not furnish any further locomotives, cars, or equipment upon the said line, nor would it advance any funds for the operation of the said line after December 31, 1935. (See Exhibit No. 4.)

There was filed upon the hearing as Exhibit No. 3, a certified copy of the report of the Interstate Commerce Commission of the United States, dated December 21, 1935, made upon an application of the Great Northern Railway Company to abandon its line of railway in the State of Washington, extending from Oroville to the international boundary at Chopaka, a distance of 20·71 miles, and by the said report the application for abandonment was approved and permission, therefore, granted. By mutual arrangement between the various parties interested in this application operation of the line between Chopaka and Oroville has been continued pending the hearing and determination of the present application for abandonment of the lines in Canada, and under the same arrangement the Great Northern Railway Company has withheld action under the notice filed, Exhibit No. 4.

The applicant company filed a financial statement (Exhibit No. 1) showing on page one the result of the operation of the whole railway system embraced in the Vancouver, Victoria and Eastern Railway and Navigation Company from its inception down to November 30, 1935. From this statement it appears that there is now an investment in road and equipment in the system embraced in the Vancouver, Victoria and Eastern Railway and Navigation Company of the sum of $18,348,137.49, and up to November 30, 1935, there is shown a total corporate loss upon the system of $9,315,391.47. This statement does not show the capital investment in that portion of the line from Princeton to the international boundary, but it was stated in evidence that $2,500,000 was the capital expenditure upon the Princeton line. But whether this referred to the line to Brookmere or only to Princeton was not made clear. Page 2 of Exhibit No. 1 contains the income account of the line from Princeton to the boundary for each year from 1929 to 1935 (11 months), showing operating revenue and operating expenses. From this statement it is apparent that since 1929 there has been an annual net operating loss over this line. The figures are as follows:—

1929	$32,189 04	1933	22,185 25
1930	30,525 46	1934	17,442 24
1931	34,768 04	1935 (11 months)	8,980 32
1932	32,427 02		

The marked decrease in net operating loss for the years 1934 and 1935 no doubt arose from the fact that owing to the washout in March, 1934, the line was not operated at all between Hedley and Princeton, and there was curtailment of operation upon other portions of the line. It should also be noted that in most of the years above specified business depression was very acute throughout the world and railway revenues fell off in a very marked degree not only in Canada but throughout all countries. The following figures taken from the statement filed by the railway may be illuminating upon this point:—

Operating Revenues		Operating Expenses	
1929	$30,616 93	1929	$45,467 78
1930	32,447 93	1930	46,635 42
1931	18,669 26	1931	36,349 15
1932	13,104 22	1932	27,196 44
1933	11,573 27	1933	16,561 81
1934	12,632 79	1934	15,202 32
1935 (11 mos.)	18,199 59	1935 (11 mos.)	12,887 60

In my opinion the only fair and reasonable impression one can gather from the figures submitted by the applicant company pertaining to the Princeton-Chopaka line of railway is that the situation is by no means an extreme one, but on the contrary it offers fair prospects of improvement upon a return to normal business conditions in Canada and in other countries.

Counsel for the applicant company argued very strenuously that the financial condition of the Vancouver, Victoria and Eastern Railway and Navigation Company was such that it had become a practical impossibility to continue operation of the line between Princeton and the international boundary. He emphasized the fact that the line had neither rolling stock nor other equipment to carry on operation, nor had it money or credit to lease or purchase same. He pointed out that the financial support which had formerly been accorded by the Great Northern Railway Company had now been definitely withdrawn and, also, that the Great Northern Railway Company had now assumed the position of a creditor seeking to enforce against the Vancouver, Victoria and Eastern Railway and Navigation Company a very substantial claim which would probably result in placing the Vancouver, Victoria and Eastern Railway and Navigation Company in insolvency.

It is also apparent that during recent years expenditure for maintenance upon the line in question has been seriously curtailed. The roadbed and bridges between Hedley and Princeton have not been repaired since the washout of March, 1934, nor has the road been operated between these points since that date. Other portions of the road are urgently in need of expenditure for new ties and repairs to bridge structures. A considerable expenditure of money will be required to put this line into proper condition for operation at the present time.

There is a great disparity between the engineers of the railway and the engineers of this Board as to the amount which would be required for this purpose.

Between the international boundary and Hedley the expenditure would not be great to maintain the road in a satisfactory state for normal operation as heretofore carried on. But between Hedley and Princeton, a distance of about 20 miles, repairs necessary to roadbed and bridges might require a considerable outlay. In 1934 after the washout upon the line, engineers of the Great Northern Railway made an estimate of the amount necessary to repair roadbed and bridges between these points at $18,120. In November, 1935, the Divisional Engineer of this Board accompanied by engineers of the Great Northern Railway Company went over the line, and the engineer of this Board made a careful estimate of the amount necessary to repair the line between Hedley and Princeton. The Board's engineer considered that the estimate of $18,120 made in 1934 by the engineers of the Great Northern Railway Company was not sufficient for the purpose, and the Board's engineer deemed it proper to add 25 per cent to this amount, which increased the amount to $22,650. In addition, the Board's engineer provided for repairs to bridge No. 360 at mileage 202 the sum of $2,500, and for bridge No. 437 at mileage 178 the sum of $3,500, and added ten per cent for supervision and contingencies, which brought the amount up to $31,515. The Board's engineer also thought that at least 300 ties per mile should be placed in the roadbed between Hedley and Princeton, and made an estimate of $8,604 for this purpose, or a total estimate of $40,119.

Mr. B. E. Burr, Assistant Engineer of the Great Northern Railway Company, stated in his evidence that the following expenditures would be necessary between Hedley and Princeton within a year:—

1. On Roadbed	$ 12,330
2. On Protective works	14,000
3. On bridges	41,360
Or a total of	$ 67,690

Mr. Burr further stated that the following amounts would be necessary for bridge repairs upon the line during the next five years:—

1936	$18,680 00
1937	72,240 00
1938	21,410 00
1939	15,610 00
1940	6,190 00

He stated that if these expenditures were made upon bridges during the next five years that an additional yearly expenditure of $32,000, or a little over $500 per mile, would maintain the line up to the recognized branch line standard in the future. He also stated that the road between the international boundary and Keremeos, 20·33 miles, would be good for the next five years with an expenditure of ordinary branch line maintenance, or $500 per mile.

In the whole distance of 58 miles there are thirty-four bridges upon the railway all of which, save one, are constructed of wood. Finally, in reply to a direct question, Mr. Burr stated that an expenditure of $54,000 upon the line between Hedley and Princeton "would put you through for another year," and in this sum of $54,000 the witness included $14,000 for protective works. It is to be noted that no expenditure has been made for protective work since the road was constructed about twenty years ago.

Upon the evidence as presented I am prepared to accept the estimate of the Board's engineer of $40,000 to put the road in satisfactory operating condition between Hedley and Princeton. I do not consider that more than normal maintenance, or $500 per mile, will be necessary upon the balance of the line at the present time. The somewhat elaborate program for expenditure upon bridges for the next five years, which the engineer of the railway has outlined, may or may not become necessary in the future, but for the present I am satisfied that the outlays which I have outlined will place the railway in a position to resume operation between the international boundary and Princeton. It is only necessary to examine the statement submitted by the applicant company to realize that the estimates for repairs and maintenance now put forth are much in excess of expenditure hitherto made by the company upon this line of railway. Indeed, Mr. Dougan, the accountant of the Great Northern Railway Company, stated in his evidence in discussing the question of maintenance, at page 348, in reply to a question put to him by Commissioner Stoneman:—

> "Yes, we have let it (maintenance) go down by some $130,000 and we will have to put it back again."

I have carefully considered these aspects of the present application. I recognize that the financial condition of the railway company forms an important element for consideration in applications for abandonment, and it must be given due weight before a conclusion is reached. It must be recognized that up to the present time these financial difficulties serious as they are have not, even during the recent years of depression, involved the applicant company in positive disability to continue operation of this line. It is but reasonable to expect that conditions will improve in the future if operation is continued. There are many indications of business improvement at various points along the line of railway, particularly in the neighbourhood of Keremeos and Hedley. It is urged in the application in this case that customs barriers raised by Canada and the United States after the construction of the railway mitigated against the business of this particular line to a serious extent. But it must be noted that these customs barriers have recently been modified to a considerable extent through the Trade Treaty which has just been completed between Canada and the United States. This in itself should produce some favourable result upon the traffic upon this particular line of railway.

I am unable to give effect to the contention of the applicant company that the abandonment of this line should be approved upon the ground of financial inability to continue operation.

Counsel for the applicant company emphasized very strongly the fact that the Interstate Commerce Commission of the United States had heretofore granted the application of the Great Northern Railway Company to abandon its line of railway from Oroville, in the state of Washington, to the international boundary. In my opinion this action on the part of a tribunal in another country in respect of a railway under its jurisdiction should not influence any action which this Board may see fit to determine in the present application relating solely to a line of railway in Canada. It is quite possible that the result of abandonment of the line in the United States may seriously inconvenience and otherwise adversely affect residents upon the line in Canada in

the shipment of their products as hitherto, but abandonment of the railway in Canada between the boundary line and Princeton would, in my opinion, leave a substantial population in a promising section of the country without any railway facilities whatever. While it is true that there was some slight settlement in the Similkameen Valley before the advent of the applicant company's railway, it was small and scattered. By far the larger portion of the present settlement in the district came as a direct result of the construction of the railway. If abandonment of this line were to take place Keremeos would be 38 miles from the nearest railway station. The fruit growers, the cattle and sheep farmers would suffer not only inconvenience but positive financial loss of a serious nature through lack of shipping facilities. Such highways as exist in this locality are as yet somewhat rough and difficult for travel. According to the evidence the highways are not adapted to the transportation of fruit or of heavy merchandise. The distance by highway either to Princeton or Penticton as the nearest shipping points, is considerable and the cost of motor truck transport is very high.

Hedley and the surrounding mining area would also be seriously inconvenienced and adversely affected if the railway were to cease operation. At least three mining companies at Hedley are at present actively developing their properties. They are showing their faith in their ventures by the expenditure of substantial amounts of money at the present time. The concentrates from these mines must go to the smelter at Tacoma for treatment. Hitherto the mines have been able to ship from Hedley by applicant company's railway to Oroville and thence by the Great Northern Railway to Tacoma. If the line to the south of the International Boundary be discontinued, shipments can still be made to Princeton and thence via the Canadian Pacific Railway to Tacoma, if the present line to Princeton is kept in operation. According to the evidence it is essential to the successful operation of these mining companies that the applicant company's line of railway continue to operate, otherwise serious additional freight charges will have to be paid by shippers of concentrates from the mines to the smelter.

It must be borne in mind that when the Vancouver, Victoria and Eastern Railway and Navigation Company came before the Legislature of the Province of British Columbia in 1897 and applied for an Act of Incorporation of a company with power to construct a system of railways in the province of British Columbia, the company was fully aware that it was obtaining a valuable franchise to undertake a work not only for the benefit and advantage of itself, but for the development of the country and for the benefit of the people who were already there as well as for those who might subsequently come into it. It is a recognized fact that settlement almost invariably follows the advent of a railway into new territory. Farms and industries are established in proximity to the railway line in territory which without railway facilities would have proved too remote for settlement. The surrounding community always feels that it has something like a vested right in the railway and in its continued operation. It considers the railway a facility which has been placed there for all time to come and lays its plans for the future accordingly.

Tax exemption was granted to the applicant company between the years 1916 and 1926 upon its property between Keremeos and Princeton, and the company was also permitted by the Government of the Province of British Columbia to acquire its right of way through Crown lands at the nominal rate of $1 per acre. These circumstances may not be important in themselves, but they form elements for consideration in determining the issue as between the railway company and the community affected in an application to abandon the line.

Since the amendment which was made to the Railway Act in 1933 providing that a railway company shall not abandon the operation of any line of railway without the approval of this Board, a considerable number of applications have been considered by the Board. In dealing with such applications the Board has made it a rule that each application must be determined by the particular circumstances surrounding each case. Prior to the enactment of the amendment of 1933 a railway company might abandon an unprofitable portion of its line of its own motion, unless there were some restriction upon its so doing either in its Act of Incorporation or under the terms of some contract or agreement. Under this state of affairs the convenience and the necessities of the public might be entirely disregarded by a railway company which desired to abandon the operation of an unprofitable line. The amendment to the Railway Act in 1933 was intended to remedy this difficulty by providing that the interests of the public should at least be considered before such abandonment should take place. In practically all of the applications for abandonment which have come before the Board, the loss sustained by the railway from the operation of a particular line has been manifest and in some cases very serious. But this Board has uniformly decided that loss sustained by the railway company arising from the operation of a line of railway is not of itself sufficient to justify the abandonment of the line. It must also be shown that the community resident in the territory affected, and the industries established therein, will not be unduly inconvenienced or prejudiced by such action on the part of the railway company. In other words, it must be demonstrated that the local community will not be unreasonably deprived of access to their properties and to markets and to shipping facilities for their produce either by railway, highway or other means of transport. The issue in each case where abandonment is sought resolves itself into a question of "whether the loss and inconvenience to the public consequent upon the abandonment outweigh the burden that continued operation of the railway line involved would impose upon the railway company." This was the decision pronounced by the Board in the recent case of Canadian National Railways vs. Tweed, reported in 44 C.R.C. at page 53. In my opinion this decision constitutes a guiding principle for the determination of cases similar to that now under consideration.

Since the hearing at Vancouver in February last, counsel for the applicant company has submitted a written argument setting forth very fully the applicant company's contentions in respect of the present application. I have gone over this written argument with care and I have compared it with the exhibits and other evidence submitted at the hearing. So far as the facts are concerned I do not think that anything has been included in the written argument which was not fully developed before the Board at the hearing.

Counsel has emphasized at considerable length in his written argument a view of section 165a of Cap. 47 Statutes of Canada, 1933, which he merely mentioned in a general way upon the hearing. He contends that section 165a does not vest in this Board any power beyond that which was vested in the courts prior to the passage of the amendment in 1933. He submits that the sole function of the Board under section 165a is to inquire (1) whether the company's charter is merely permissive and (2) whether the company is losing money by its operation. I cannot accept this limited construction of section 165a. The case of Darlaston Local Board vs. L. & N.W. Ry., (1894) 2 Q.B. 694, 63 L.J., Q.B. 826 (1894) 8 Railway and Canal Traffic Cases, is cited as a statement of the law upon the subject as applicable in Canada prior to the passage of the above amendment. The Board has in a number of its decisions prior to 1933 cited the Darlaston Case as an authority, which precluded any

action by the Board where a railway company undertook a voluntary abandonment of a line. I think there is no doubt that as a consequence of the decisions of the Board in this respect section 165a was incorporated in the Railway Act, for the express purpose of denying to railway companies the right to abandon operation regardless of the interests of the public.

Section 165A reads as follows:—

> "The company may abandon the operation of any line of railway with the approval of the Board, and no company shall abandon the operation of any line of railway without such approval."—

while the corresponding section in the Interstate Commerce Act section 1 (18) is as follows:—

> "No carrier by railroad subject to this Act shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment."

It is true that the language used in the Interstate Commerce Act is much more specific than the language in section 165a. In my opinion the general language employed in section 165a is more comprehensive than is the language in the Interstate Commerce Act above quoted. I think that the language of section 165a vests in the Board a wide discretion in regard to the grounds upon which its approval may be either given or withheld. The necessity and convenience of the public should form one of the first matters for consideration when the Board is asked to approve the abandonment of a line of railway. It must be borne in mind that the Railway Act was not designed solely in the interest of railway companies. It was also designed to safeguard the interests of the public in general, and this fact should be kept in view when seeking to construe many of the sections of the Act. Since 1933 the Board has uniformly maintained this view of section 165a in the applications for abandonment which have been dealt with, and the judgment of the Board in Canadian National Railways vs. Tweed, above referred to, is in my opinion the correct rule which should be followed. I cannot agree with the argument submitted by counsel for the applicant company that the Board has no discretion under section 165a. The section places upon the Board the duty of approving or disapproving such applications for abandonment, and in the performance of this duty the Board must of necessity exercise wide discretion and must have regard to all the rights and interests involved, and not merely to those of the railway company. Were it otherwise, the effect of section 165a would be merely to transfer to the Board the jurisdiction heretofore exercised by the Courts. I am satisfied that such is neither the meaning nor the intent of the section.

Having regard to all the facts and circumstances which surround the present application, I am unable to find that the burden which may be imposed upon the applicant company through continued operation of the railway line in question will prove greater than the loss and inconvenience to be suffered by the public as a result of abandonment. I feel satisfied that the preponderance of loss and inconvenience will be unquestionably upon the public. I am inclined to think that the applicant company has taken a much too despondent view of the prospect for railway operation as it exists today, particularly through the territory traversed by this line of railway. In this respect I would adopt the language of Commissioner Stone in his judgment pronounced by

this Board upon a former application of the company in regard to this line of railway, which is as follows:—

> "In the past five years all business has suffered more or less throughout the depression. Large expenditures were made by agriculturalists and business interests in the Keremeos Valley and the Hedley district. The efforts of many years have changed the former sage brush territory into a large profitable fruit producing area. The mining interests at Hedley should not be refused rail connection, retarding their activities at a time when the prospects are so bright for profitable developments—profitable to the railway as well as to the industry."

For the reasons above stated I am of opinion that the present application for abandonment should not be approved by the Board; and that the present order of the Board, No. 51690, dated January 25, 1935, amended by Order No. 52048, dated June 29, 1935, should remain in effect.

April 9, 1936.

Commissioners Stoneman and Stone concurred.

ORDER No. 53009

In the matter of the application of the Vancouver, Victoria and Eastern Railway and Navigation Company, hereinafter called the "Applicant Company," under Section 165A of the Railway Act, for approval of the abandonment of a portion of its line of railway, from the Town of Princeton, in the Province of British Columbia, southerly to the International Boundary, a distance of 58·40 miles.

File No. 33882

SATURDAY, the 11th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Princeton, B.C., February 22, 1936, and in Vancouver, B.C., February 24, 1936, in the presence of counsel for the applicant company, the Government of the Province of British Columbia, the Hedley Mascot Gold Mines, Limited, Kelowna Exploration Company, Limited, and Hedley Amalgamated Gold Mines, Limited, and what was alleged; and upon reading the written submissions filed,—

It is ordered: That the application be, and it is hereby, refused; and that the provisions of order No. 51690, dated January 25, 1935, as amended by Order No. 52048, dated June 29, 1935, shall remain in full force and effect.

H. GUTHRIE,
Chief Commissioner.

Application of the Canadian National Railways for an Order granting leave to abandon the operation of that portion of its Nicolet Subdivision, in the Province of Quebec, between St. Leonard Junction (mileage 0·00) and Nicolet (mileage 14·7), a total distance of 14·7 miles.

File 39310.9

JUDGMENT

COMMISSIONER STONE:

The Canadian National Railways operate two trunk lines through the territory involved in this application—

(*a*) St. Lambert via St. Hyacinthe Jct., Drummondville, St. Leonard Jct., Aston Jct., thence to Levis and Halifax, N.S.; and

(*b*) St. Lambert via Sorel, Bellevue Jct., Nicolet, St. Gregoire, Aston Jct., and Victoriaville, where connection is made with the Quebec-Richmond line of the Canadian National Railways.

Between these two trunk lines there are two branch lines, one between St. Hyacinthe Jct. and Bellevue Jct., 31·3 miles, which service extended over the trunk line into Sorel, 4·9 miles west of Bellevue Jct.; the other between St. Leonard Jct. and Nicolet, 14·7 miles.

Under section 165A of the Railway Act and all other appropriate statutory provisions the Canadian National Railways made application for authority to abandon both branch lines and the end segment of the northerly trunk line between St. Gregoire and Victoriaville, a distance of 30·4 miles.

Inspections were made of the properties and investigations conducted at the most important centres along each line by officials of the Board. Later these applications were heard by the Board at points adjacent to the lines of railway involved which were found most convenient to the majority of the parties concerned.

On the St. Hyacinthe-Bellevue branch line several important parishes are served, representing a substantial population who would be seriously affected if this line were abandoned. The Board considered it was not in the public interest to abandon service on this line, and the application was refused.

The St. Gregoire-Victoriaville segment of the northerly trunk line connects at Victoriaville with the Quebec-Richmond line of the Canadian National Railways. At Richmond rail connection is made with lines to the most important cities and towns in the southern portion of the province of Quebec and the United States; also with western points in New Brunswick. At St. Gregoire the trunk line extends west to Nicolet, Sorel, St. Lambert, thence to Montreal, and north from St. Gregoire to Doucet's Landing, from which place ferry connection is made to Trois Rivières and other points north of the St. Lawrence river. This ferry operates day and night during navigation season and transports both passengers and freight. Public necessity and convenience required continued operation of this line, and this application was also refused.

The St. Leonard-Nicolet branch line, 14·7 miles, was at one time an important link between Nicolet and the southerly trunk line at St. Leonard Jct. Since the amalgamation of the former Grand Trunk Railway line between Victoriaville and Doucet's Landing with the Canadian National Railways in 1923, and by authority of the Act 19-20 George V, Chapter 15 of the Statutes of Canada, 1929, the former Montreal, Quebec and Southern Railway also became part of the Canadian National Railways, the St. Leonard-Nicolet line has lost much of its significance as an important through rail route, as it parallels the segment of the northerly trunk line between St. Gregoire and Aston Jct., 12·6 miles.

The distances as shown between these parallel lines are: St. Leonard to Aston Jct., 8 miles; Ste. Monique-Ste. Celestine, approximately 5 miles; and Nicolet-St. Gregoire, 6·5 miles, with adequate highway connections. Between St. Leonard Jct. and St. Gregoire via Nicolet the rail mileage is shown as 21·2 miles, and the shorter route via Aston Jct. as 20·6 miles.

At the hearing held at Nicolet on May 17, 1935, some of the evidence presented referred to both parallel lines, and it was understood evidence in connection with both applications would be considered jointly.

> Mr. Rand: "I think it might be better to consider both cases together because the districts covered are contiguous and there is community of interest between the two."

The Deputy Chief: "I think you are right." *Evid. Vol. 622, p. 967,*

The statements submitted by the railway for the two lines involved were as follows:—

TOTAL RECEIPTS	St. Leonard-Nicolet	St. Gregoire-Victoriaville
1930-1931	$10,311 00	$15,473 00
1933	3,184 00	6,943 00
1934	3,953 00	7,831 00
EXPENSES		
1930-1931	$34,521 00	$78,746 00
1933	24,937 00	45,256 00
1934	27,746 00	40,269 00
SYSTEM LOSS		
1930-1931	$24,210 00	$63,274 00
1933	21,753 00	38,313 00
1934	23,813 00	32,428 00
CAR LOADINGS		
1930-1931	70	118
1933	23	32
1934	34	40

An analysis of these statements show that the system loss on the St. Gregoire-Victoriaville line considerably decreased between 1930 and 1934. Apart from this feature there was through traffic carload freight hauled over this line for which credit for mileage on a percentage basis does not appear; nor is there any record of conductors' cash receipts.

The situation in regard to the St. Leonard-Nicolet branch line is different, as there has been no substantial improvement between 1930 and 1935. The system loss charged against this branch line in 1930-1931 was $1,646.94 per mile, and in 1934, $1,613.13 per mile.

From the above figures it will be seen that the system loss in operation of these parallel lines amounted to $87,480 for the period shown in 1930-1931; in the year 1933, $60,066; and in 1934, $56,251. In addition to these losses there must be added deferred maintenance costs.

The passenger revenue shown for 1930-1931 as $1,971 fairly represents, it is alleged, the revenue for that period. The figures submitted for 1933 and 1934 did not show the conductors' cash returns. A supplementary statement now filed by the railway company includes all receipts from passenger traffic, and is recorded for 1933 as $750; 1934 as $1,060; and for 1935 as $1,418. The total revenue on this line from all traffic for the year 1935 is shown as $6,443.

The line runs through a sparsely settled agricultural district. The manufacture of butter and cheese forms the principal industry, although there are small community sawmills.

There is a bus service operating between Drummondville and Trois Rivières, with good gravel roads throughout the district. Ste. Monique is the only village on the line and is located 6·5 miles from Nicolet, and 8·2 miles from St. Leonard Jct. The population of Ste. Monique village is estimated at 250.

The abandonment of the Nicolet-St. Leonard branch line will still leave rail connection east and west to Nicolet and St. Leonard, and will not affect exchange of rail traffic between business centres north and south of the river St. Lawrence via Doucet's Landing provided operation of the St. Gregoire-Victoriaville line is continued with adequate train connections at Aston Jct. The distance to St. Leonard Jct. and points west is a fraction shorter via Aston Jct. than by way of Nicolet.

It is clear from the record that there is insufficient available rail traffic to support two parallel lines in this territory. Continued operation and maintenance of the Nicolet-St. Leonard line will impose an undue burden upon the resources of the applicant. With other accessible rail connections within a reasonable distance the proposed abandonment will not result in serious public inconvenience.

In view of the facts involved I find myself in disagreement with the Judgment and findings of the Deputy Chief Commissioner in connection with this application. In regard to his reference to the legal aspect of this case my views are similar to those expressed in Canadian Pacific Railway Orford Subdivision application, *25 Board's Judgments and Orders, p. 473,* and I see nothing inconsistent in the Board exercising its powers under section 165A in the present application, with the provisions of section 153 of the Railway Act.

Considering all the facts involved, I would grant the application to become effective sixty days from date Order issues. The railway company to provide adequate train service between Nicolet, Doucet's Landing and Aston Jct., connecting with main line trains at Aston Jct., as well as suitable station and siding facilities to take care of the traffic.

Ottawa, April 1, 1936.

Commissioner Norris concurred.

Garceau, F. N., Deputy Chief Commissioner (Dissenting):

This trunk line that it is desired to abandon is a portion of the old Drummond County Railway which was bought by the Government in 1898 to be added to the Intercolonial Railway system. It connected the town of Nicolet with Drummondville via St. Leonard.

Nicolet has a population of approximately 4,000 inhabitants. Several religious and educational institutions are located there; also, the residence of the bishop of that diocese, who has under his direction nearly 100,000 persons. In addition, the hospitals and the orphanage of the diocese are located there. We find there industrial plants, a public market, a registry office, a sanitary unit, and a court-house where sittings of the Superior Court of the province of Quebec are held.

A memorandum submitted by His Excellency the Bishop of Nicolet as well as various resolutions received from the chambers of commerce and the municipalities of that district clearly show the importance of the relations of that town with the population of the counties of Nicolet, Arthabaska, Drummond, and part of Bagot county. The evidence has shown its commercial and industrial importance.

The earnings at Nicolet station amount to $30,000 or $35,000.

The town of Nicolet contributed subsidies to the Drummond County Railway towards the construction and operation of the line between Nicolet and

Drummondville—see paragraph 2 of the Agreement on file No. 28563.181 which is mentioned in telegrams filed by Mr. Justice Trahan and by Mr. Grenier, K.C., at the hearing. Said paragraph, as amended on request of the Drummond County Railway Company, reads as follows:—

> "The said sum of ten thousand dollars shall not be paid to the said company until three months after the completion of its railway, that is to say, until trains are operated between Nicolet Harbour and Drummondville, without interruption."

Furthermore, the Agreement contains a provision that was ratified by a by-law of the town of Nicolet and which reads as follows:—

> "The said company must unite by means of a railway between now and October, 1890, the town of Drummondville to the town of Nicolet and the harbour if the work of said harbour is completed; and, in case the said company extends its railway as far as Doucet's Landing or Ste. Angele, the railway must pass by the said town of Nicolet before continuing on to Doucet's Landing or Ste. Angele."

This railway also received subsidies from the Government of the Province of Quebec (chapter 91, 50-52 Victoria, subsection 2 of section 6) of $4,000 per mile for a distance of 39 miles, from Drummondville to Nicolet or Doucet's Landing

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The Canadian National Railways, on September 9, 1931, applied to the Board of Railway Commissioners for leave to abandon the operation of all passenger trains between St. Leonard and Nicolet. Not having been successful with that application, on April 13, 1932, they requested the approval of a change in the time table and, finally, on January 18, 1935, they made the present application, showing a deficit of $22,000 for the previous year. Each time, the interested municipalities strongly opposed these applications.

The changes in schedules caused serious inconvenience and loss. There is on file a complaint from Mr. Descoteaux, dated April 30, 1935, in which he states that he was compelled to cancel a contract for the sale of his milk to Montreal, thereby suffering an annual loss of at least $500, also that the farmers of that locality suffered, like himself, losses proportionate to the importance of their production. There are about two hundred farmers so affected. I shall deal again with this matter.

In order to deal fairly with the railway company's application, we must consider its consequences, if granted, not only for Nicolet and Ste. Monique, but also for a considerable part of the province.

The town of Nicolet is an educational and religious centre of primary importance which serves for such purposes a population of nearly 100,000 persons, as stated by Mgr. Camirand; but it is not the logical terminal point of train service, any more than St. Leonard, as presently established. The trains should continue as far as Doucet's Landing, connect with the north shore by means of a ferry, and give a population of 100,000 and the traffic of that district the opportunity of taking advantage of these trains.

By looking at the map of the province, we observe that three railway lines meet at Doucet's Landing, being connected at Three Rivers, as I have just stated, by means of a ferry service. It is at that point that all the traffic from the north and south shores of the St. Lawrence river, in the central part of the province, should be concentrated.

The St. Lawrence river divides the province in two parts. The most populous part, if we exclude Montreal, is the south shore, and communication between these two shores is possible only at Montreal, Three Rivers, and Quebec.

It is therefore at that point, necessarily, that the traffic business concentrates, and that is why private concerns have built these converging lines that the Canadian National Railways counsel calls parallel.

Each one of these railway lines serves a determinate section of the central and southeast section of the province of Quebec.

The trunk line from Doucet's Landing to Victoriaville runs through the territory formerly crossed by the old Grand Trunk and comprising the counties of Nicolet, Arthabaska, Wolfe, Richmond, Sherbrooke, and brings or could bring to Three Rivers and the north shore the passengers and freight of that district and of the New England States, or vice versa.

The other trunk line which runs through Nicolet and St. Leonard brings or could bring to Three Rivers, or vice versa, the people and the traffic from St. Hyacinthe, Drummondville and intermediate points.

So far as the third trunk line is concerned, namely, Montreal-Sorel-Nicolet-Doucet's Landing, it serves only a limited territory along the shores of the St. Lawrence river, from Montreal to Doucet's Landing, and if it can handle, without inconvenience, all the traffic from Montreal and from these other points, it is nevertheless true that the abandonment would mean that all the traffic from the county of St. Hyacinthe and north thereof, as well as the traffic of all the southeast section of the province of Quebec could be directed towards Three Rivers only by a long detour via Montreal or Quebec. This is also true of the traffic between Three Rivers and vicinity and these districts.

The railway company's application for leave to abandon the operation of its Victoriaville-Doucet's Landing line was refused, and consequently Three Rivers has access via the Grand Trunk to the central south and southeast sections of the province; but, if the line Nicolet-St. Leonard were abandoned, all the traffic business from the counties of St. Hyacinthe, Bagot, Drummond and part of Nicolet, would be deprived of all direct railway communications with Three Rivers and Nicolet; and, consequently, Three Rivers and Nicolet with that section of the province.

As it is now, owing to present schedules and want of connections, communication by rail between St. Hyacinthe, Drummondville and intermediate points with Three Rivers is virtually impossible unless one goes to Nicolet or St. Leonard and spends the night there.

It would be possible by using the same staff and the same trains to have direct communication between St. Hyacinthe and Three Rivers, via Nicolet, with a return trip on the same day.

Train 143 stays overnight at St. Leonard and leaves there at 8.10 a.m.; why should not this train remain overnight at Doucet's Landing, leaving there at about 7 a.m. for St. Hyacinthe, as at present, thus allowing the travelling public and the freight from Three Rivers or Nicolet to go to Drummondville or St. Hyacinthe?

It would cost the railway no additional expense but a few tons of coal, and train 142, which leaves St. Hyacinthe at 10.30 a.m., and arrives at Nicolet at 12.45 p.m., could just as well extend its run to Doucet's Landing or at least connect at Nicolet with the train going to Doucet's Landing a few minutes earlier and thus accommodate both the traffic and the travelling public desiring to go to Three Rivers. And this train which leaves Nicolet at 6.30 p.m. as No. 141 might leave Doucet's Landing at about 5 p.m. to bring back on the same day the passengers or freight of St. Hyacinthe, Drummondville and intermediate stations.

With the actual service, how can it be expected that the railway will be patronized when the trains leave at unsuitable hours and do not go to the points where the travelling public and freight have to go?

We must not consider that portion of the railway line from Nicolet to St. Leonard apart from the remaining portion of the line at either end but rather

as being part of a railway line which starts at Doucet's Landing and goes to St. Hyacinthe to connect with the trains for Montreal, the Eastern Townships and the United States.

We must not forget the importance of Three Rivers, Grand'Mère, Shawinigan Falls, with respect to its trade and passenger and freight traffic with populous and commercial centres like Drummondville and St. Hyacinthe.

It is true that there is now a bus service between Drummondville and Three Rivers, but none exists between St. Hyacinthe and Drummondville and Drummondville and Nicolet. Furthermore, this bus service is provided during only part of the year, and motor vehicles cannot run and have never run during winter in that section of the province.

Trade between the north and south shores of the St. Lawrence river is not what it should be, but, it can be anticipated that with a suitable train service it would become very important.

This trunk line from Nicolet to St. Leonard is also the link necessary for the religious, educational and hospital needs of a population of more than 35,000 souls, as stated by Monseigneur Camirand. It could serve as a connection between the north shore of the St. Lawrence river and that section of the district of the province of Quebec included in the counties of Nicolet, Arthabaska, Drummond, Bagot and St. Hyacinthe.

In previous years there was traffic available, even though the service did not connect this line with Three Rivers via Doucet's Landing.

Since the hearing, the railway company has filed a statement purporting to establish that if this trunk line were abandoned, it would mean only the re-routing of about fourteen cars.

This assertion is misleading and does not give credit to the traffic possibilities of that section of the country, no more than does the statement giving the earnings at Ste. Monique Station for 1934 as $3,933.

This station of Ste. Monique in 1928 had receipts of $12,748.70; in 1929, of $14,253.48; and, even in 1930 the earnings were $9,971.45.

It must be noted that in 1928, 1929 and 1930, the freight received amounted to more than $18,000, i.e., $6,476.01 in 1928, $7,228.42 in 1929, and $4,654.25 in 1930.

These inward revenues were the reason why the petition of the railway to abandon Ste. Monique as an agency in 1931 was dismissed by Commissioner Norris and colleagues although the total revenues never reached $15,000 as required by General Orders 54 and 119.

These figures demonstrate the traffic of this section of the country at that time and if we look into the schedule of trains we have the explanation why these revenues dropped below $4,000.

In 1929 the Canadian National Railways acquired the line from Montreal passing through Sorel and Nicolet and traffic from this line is now credited to the other line (see Mr. Charron's evidence, p. 1005):—

> "Now, Mr. Charron, will you tell the Commissioners if you keep one account only for the branch Sorel-St. Leonard, or have you a separate account?
>
> "A. It is the same account; all the freight is put in a single statement."

In 1932, when the depression was most acute, the prices paid for farm products being at a minimum, the railways succeeded in removing the agent from Ste. Monique, although the earnings in 1931 had been $7,259.77 out of which the freight received amounted to $3,824.48. This action of the railway together with the re-routing of freight or at least crediting to Nicolet all freight passing on the other line accentuated the drop in earnings.

Another factor is the preference given to the north shore of 4 cents per 100 pounds on grain coming from the West to Three Rivers. This difference was, at first, 7½ cents per 100 pounds and the dealers and consumers of the south shore were forced by this difference to consign their carloads to Three Rivers.

This preference fostered the development of truck service and we have the evidence of Mr. Gaudet, a wholesale merchant of Aston, establishing the fact that it is one of the handicaps which dealers and consumers attempt to overcome by using motor vehicles.

The competitive tariffs favour centralization at the expense of the normal development of the country and work to the detriment of the railways which are obliged very often to make a longer haul for the same price. Such tariffs discriminate against some sections of the country and have compelled the consumers and the dealers of this south shore to use motor trucks.

Centralization was the policy followed in previous years but now experience has shown its fallacy and there is a marked tendency towards decentralization. The railways have not yet realized this necessity and still continue their tariffs to favoured centres.

With proper rates, service and connections, the railway company could prosper and help the farming and industrial population of this region.

It must also be borne in mind that, in Quebec, there is only one mile of railway to 559 inhabitants while in Saskatchewan there is one mile to every 108 inhabitants; in Alberta, one mile to 117·7 persons and in Ontario one mile to 302·9 inhabitants.

I quote these figures to establish that in Quebec the railways have a better field of operation than in any other province and that there is no reason where there is population, traffic, why a line essential to industry, agriculture, educational institutions and hospitals, should be abandoned.

Are the agreements referred to in page 2 of this Judgment binding on the Canadian National Railways to give a permanent service of train between Nicolet and Drummondville? They cannot be construed otherwise. The town of Nicolet paid a cash subsidy of $10,000 for the sole purpose of securing a permanent train service (without interruption) with Drummondville (see Grant's Chancery Reports, p. 52 and seq. as to the interpretation of the wording of a contract).

The above mentioned disposition agreed to by the Drummond County Railway duly and legally empowered to make such a contract has become the obligation of the Intercolonial Railway or of the government and finally of the Canadian National Railways.

When the Drummond County Railway was sold to the government to form part of the Intercolonial Railway, a specific act was passed by Parliament, 62-63 Victoria, chapter 6, giving the proper authority to the Governor in Council to purchase . . . "the whole of this railway and undertaking, including all its main and branch lines and all buildings, structures and appurtenances." From the amount to be paid for the purchase price, the Federal subsidies paid to the Drummond County Railway were to be deducted.

Order in Council 2338, dated November 4, 1899, says: " . . . The said deed, in addition to the stipulation of the said Act, with regard to the said charges, lien or encumbrances to contain such provisions as, in the opinion of the Department of Justice, will secure the government against claims for land or for land damages, injuries and such like, arising out of any alleged action or omission of action on the part of the company before the date of the execution of the said deed of conveyance."

The Government was to be discharged and it was discharged of any claims as to debts of the Drummond County Railway and to ensure such protection a certain amout of money was withheld to effect such payment when called for. The provincial and municipal subsidies were not mentioned or refunded.

It may be said truly and legally that, in the absence of any disposition to the contrary in the special act or in the Order in Council, the contract between Nicolet and the former company is as binding on the buyer as it was on the vendor.

The present petition of the railway company is indirectly but really a request to the Board to be relieved of a contractual obligation for which it received due consideration.

The Board is the authority constituted by Parliament to ensure to the public a proper service by the railways but not to relieve the railways of duly contracted obligations as to service.

It is true that the Board has the judicial discretion . . . "where it is complained by or on behalf of the Crown or any municipal or other corporation or any other person aggrieved, that the company has violated or committed a breach of an agreement between the complainant and the company—or by the company that any such corporation or person has violated or committed a breach of an agreement between the company and such corporation or person . . . to make such order as to the Board may seem reasonable and expedient and in such order may in its discretion direct the company or such corporation or person to do such things as are necessary for the proper fulfilment of such agreement . . . "; but, in the present instance, there is no such complaint; on the contrary, the Board is asked permission to violate or rather to cancel a duly made Agreement and the only authority given to the Board in such circumstances is, in my opinion, section 153 of the Railway Act which reads as follows:—

> "153. (1) Notwithstanding anything in any agreement made or sanctioned under the provisions of the last two preceding sections, every act, matter or thing done, effected or confirmed under or by virtue of this Act, or the Special Act, before the date of the coming into effect of such agreement, shall be as valid as if such agreement had never come into effect; and such agreement shall be subject and without prejudice to every such act, matter or thing, and to all rights, liabilities, claims and demands, present or future, which would be incident to, or consequent upon such act, matter or thing if such agreement had never come into effect.
>
> (2) In the case of an agreement for amalgamation, as to all acts, matters and things so done, effected or confirmed, and as to all such rights, liabilities, claims and demands, the amalgamated company shall for all purposes stand in the place of and represent the companies who are parties thereto and the generality of the provisions of this section shall not be deemed to be restricted by any Special Act, and expressly limited or restricted thereby. R.S., c. 37, s. 363."

The Board is a tribunal, a court of record, and for the purpose of this Act —Railway Act—has full jurisdiction to hear and determine all matters whether of *law or of fact* (section 32, ss. 2).

The above mentioned contract or agreement, being one of those contemplated by the above-mentioned section of the Railway Act, the Board must, in my opinion, decide on the validity of this agreement, its binding force on the railway and cannot refer this question to the civil courts because the Board is the authority, at the exclusion of the civil courts, to decide on the question of abandonments or train service.

Section 165A, which says: "The company may abandon the operation of any line of railway with the approval of the Board, and no company shall abandon the operation of any line of railway without such approval," cancels the rights formerly possessed by the railway companies with regard to abandonment of lines in the absence of legal and licit contractual or statutory provisions to the contrary.

The same opinion was affirmed by a recent judgment rendered by Commissioner Stoneman, in which concurred Assistant Chief Commissioner McLean and Commissioner Norris, *re:* Application of the Canadian National Railways for leave to abandon a portion of its Orono subdivision, between Ronnac and Greenburn, Ont. (File No. 39310.23), in which it is stated:

> "Before the year 1933, unless there was a statutory or contractual provision requiring a railway company to operate its road, it was at liberty to abandon the whole or any portion of its line."

This section was inserted in the Railway Act as a protection to the public. It has no bearing in the present instance. Even in its absence, the railway company would have been legally bound by the above-mentioned contract to ask leave of the Board before abandoning a branch line.

This question was dealt with extensively by the Board in various cases mentioned in my Judgment, *re:* Orford Subdivision (F. 39309) to which I refer.

In case No. 39309, Commissioners Stone and Norris, in their judgment said:—

> "The interpretation as placed on section 35 of the Railway Act by the Deputy Chief Commissioner in his Judgment in this case, if correct, precludes the Board from authorizing any abandonment of lines of railway; and section 165A which became effective May 23, 1933 (chapter 47, 23-24 George V) could not be made applicable to any railway company to which a subsidy had been granted and paid under a subsidy contract.
>
> "It cannot logically be presumed that Parliament intended any such limitation should be placed on the power conferred. Therefore, I am not in accord with the judgment of the Deputy Chief Commissioner, nor his conclusions as based on the facts submitted in this case."

This decision concerning section 35 of the Railway Act is a negation of the decision rendered by the Board in City of Hamilton v. Grand Trunk Ry. Co., 21 C.R.C., p. 211, which declared that "a specific breach of an agreement must be shown to give the Board jurisdiction under 8 and 9 Edward VII, chapter 32, section 1 (section 35 of the Railway Act)."

In case No. 39309 as in this one, there is no specific breach of an agreement complained of or shown.

The decision rendered in the case above referred to (City of Hamilton v. Grand Trunk Ry. Co.) is in absolute accord with the wording of section 35 which reads thus:—

> "Where it is complained by or on behalf of the Crown or any municipal or other corporation or any other person aggrieved, that the company has violated or committed a breach of an agreement between the complainant and the company—or by the company that any such corporation or person has violated or committed a breach of an agreement between the company and such corporation or person . . . the Board shall hear all matters relating to such alleged violation or breach and shall make such order as to the Board may seem reasonable and expedient, and in such order may, in its discretion, direct the company, or such corporation or person, to do such things as are necessary for the proper fulfilment of such agreement, or to refrain from doing such acts as constitute a violation or a breach thereof."

In view of the above cited decision on the interpretation of the wording of section 35, it is evident that it can have no bearing in this instance.

Therefore, we must look to other dispositions of the Act concerning contracts. Section 153 deals with contracts such as those filed in the above-mentioned case and in the present one. This section, in my opinion, is the law to govern the Board's decision in this matter.

The Board has not the discretion to overlook the contracts or to ignore them, or to refer them to the civil courts. In many instances, as stated in the above-mentioned case, the Supreme Court decided so. The Board having authority to decide a question of law and such question of law being exclusively of the jurisdiction of the Board, it must decide of their validity and of their binding force on the railways.

For these reasons and those mentioned in my judgment in the Orford Subdivision, I cannot accept the ruling of my colleagues.

The first part of section 165A says:—

> "The company may abandon the operation of any line of railway with the approval of the Board" . . .

This general jurisdiction given to the Board so far as abandonments are concerned must be read with the other sections of the Railway Act. Chapter 33, 22-23 George V, does not apply.

Section 22 of Chapter 1, R.S.C. 1927, says:—

> "An amending act, so far as is consistent with the tenor thereof, shall be consistent with the act which it amends."

We may conclude that section 153 of the Railway Act still has the same authority as before the enactment. The Board when acting under the authority of section 165A is still obliged to consider section 153, the terms of which are so specific and conclusive and read as follows:—

> ". . . and the generality of the provisions of this section shall not be deemed to be restricted by any special act unless this section is expressly referred to in such special act and expressly limited or restricted thereby."

Abandonment, even when not prohibited by any legal instrument, must be looked on with disfavour. It means the destruction of costly assets, hardships to communities, loss of jobs to many, demoralization to those affected, and with possible indefinite reactions against public weal.

The railways can show their actual operating deficit but it is impossible for the public to put before a tribunal all the consequences of the abandonment, the losses and handicap it will have to bear, the depreciation of property, the desertion of the population towards more favoured centres. Who can determine the precise factor, moral or material, which gives a man the will to carry on? And, what is the national problem? To solve unemployment, to keep the man at his job, to provide work for the wandering youth, for everybody fit to work, to restore faith and hope in the future. Abandonment is the negation of this aim.

A proper control of highway carriers, better economic conditions, adequate service, can turn the actual loss of the railway into profit; but, what of the farmer unable to stand the greater hardship that would result from the abandonment? What of the men deprived of their jobs who will lose almost $18,000?

Relief to the difficulties of the railways lies with themselves and with Parliament, as expressed by the Interstate Commerce Commission (Ex parte 115, p. 70): *(mutatis mutandis)*

> "The answer to the problem before us will be found (1) in the return of a normal condition of business activity and movement, to be achieved only through continued and patient co-operation of carriers and shippers, with the thought of present profit submerged for the moment, even to the point of *personal sacrifice* in the interest of the speedier resumption of better conditions for all; and (2) by such prompt action on the part of

Congress as will insure that competition between the various forms of transport agencies be on equal and fair terms, with the welfare of a national transport machine as the objective."

The railways claim operating losses of $22,000 in 1934, of $24,000 in 1933.

The evidence is not conclusive enough to justify this contention, but, even if it were, the abandonment ought not to be granted. The actual operating losses are the sequence of temporary conditions, the depression, the lack of a convenient service to foster any traffic possible, especially with the north shore; freight and passenger rates higher than traffic can bear.

It was recently decided by the Interstate Commerce Commission that the railways shall not charge more than 2 cents a mile for passenger traffic. Experience in the Western and Southern States has shown that the railways had increased their earnings substantially by charging such low rates. The periodical excursions organized by railways in Canada confirm this experience.

Officials of the railways have not yet acquiesced to this policy but have declared that they will study it. There is no doubt that their conclusions will be the same.

The investigation made in the United States by experts during two years has also demonstrated that the railways must reduce their rates (freight rates) in order to compete advantageously with other carriers. This report says: "They are (the railways), when properly equipped and manned, the speediest, cheapest carrier." Even without a proper control of motor vehicle competition, the railways, according to that investigation, can, in most circumstances, have the advantage over their competitors.

In view of the density of the population, of the actual and potential traffic, with better communications and connections with the north shore, with trains running at suitable hours, it can be expected that operations will prove profitable.

I repeat, the railways can show their operating losses but it is impossible to establish positively to what extent the public would be inconvenienced by an abandonment.

We know in this instance that the railway employees would lose around 81 per cent of the amount economized by the railway. This proportion is established by the railway company itself—see their report of operation during 1933, p. 5, where it is said that the economies realized out of labour were in the proportion of 81·17 per cent of the total amount saved during the year.

We also know that the actual service has meant a loss of thousands of dollars to the farmers of Ste. Monique. Mr. Descoteaux in his letter states that he is losing $500 yearly because he is unable to ship his milk to Montreal. We know that since two or three years there is a minimum price paid by the Montreal milk dealers. This price was, last year, of $1.85 per 100 pounds and the local price paid by the dairy factories is around half of that amount.

There are about 200 farmers in Ste. Monique. They are not all producers in as great quantity as Mr. Descoteaux, but I believe it is safe to say that it means a heavy yearly loss to each of these farmers.

The figures given by the railways concerning the milk traffic in Ste. Monique cannot apply because the present law concerning minimum price did not exist at that time, and the farmers were left to the goodwill of the Montreal dealers.

We also know that with proper rates the inhabitants of Ste. Monique would raise hogs and cattle.

There are in the various institutions of Nicolet around 900 inmates and half of them have relatives in the district connected with Nicolet by that trunk line. The abandonment would mean that a great number of these persons would

have to leave these institutions because it cannot be expected that the connections at Aston would be used by their relatives to visit them; they would be obliged to sleep in Nicolet and return only the next day, paying higher fares than presently. They would arrive at Nicolet at 6.20 p.m. and would leave the next forenoon and be back at their homes around 4 p.m. or later.

Therefore, if the abandonment were granted, the railways, according to their figures, would economize $22,000 but their employees would lose around $18,000; Ste. Monique, which in the past was a station having earnings of over $14,000, would be deprived of railway facilities; the institutions of Nicolet which mean so much to the intellectual and moral needs of this section of the country would suffer the loss of hundreds of its boarders.

Can we say that it is in the public interest to abandon this line when the railway company is legally bound to operate it, if we consider the potential traffic should the railway give a proper and adequate service with reasonable rates and convenient connections, when we know that the actual conditions are transitory, when experience has shown profitable operating results, when the whole transportation problem is to be studied in the near future?

I would dismiss the application.

March 25, 1936.

(TRADUCTION)

Requête de la compagnie des chemins de fer Nationaux du Canada, demandant qu'une ordonnance soit rendue l'autorisant à discontinuer l'exploitation de la partie de sa ligne sur sa Subdivision de Nicolet, dans la province de Québec, qui s'étend de la Jonction de Saint-Léonard (mille 0.00) à Nicolet (mille 14.7), soit un parcours de 14.7 milles.

Dossier N° 39310.9

JUGEMENT

LE COMMISSAIRE STONE: —

La compagnie des chemins de fer Nationaux du Canada exploite deux lignes principales à travers le territoire dont il s'agit dans la requête, à savoir: —

(*a*) La ligne de Saint-Lambert qui passe par la jonction de Saint-Hyacinthe, Drummondville, la jonction de Saint-Léonard, la jonction d'Aston, et de là pour continuer à Lévis et à Halifax, N.-E., et

(*b*) La ligne de Saint-Lambert qui passe par Sorel, la jonction Bellevue, Nicolet, Saint-Grégoire, Aston-Jonction et Victoriaville où il se fait un raccordement avec la ligne du chemin de fer Québec-Richmond de la compagnie des chemins de fer Nationaux.

Entre ces deux lignes principales, il y a deux embranchements: un entre la Jonction de Saint-Hyacinthe et la Jonction Bellevue, un parcours de 31.3 milles, avec service qui se prolonge sur la ligne principale jusqu'à Sorel et qui comprend un parcours de 4.9 milles à l'ouest de la Jonction-Bellevue; l'autre qui s'étend de la Jonction de Saint-Léonard à Nicolet et qui comprend un parcours de 14.7 milles.

En vertu de l'article 165A de la Loi des chemins de fer et des autres dispositions statutaires qui s'appliquent, la compagnie des chemins de fer Nationaux du Canada a fait une demande à la Commission pour être autorisée à disconti-

nuer l'exploitation de ces deux lignes d'embranchement ainsi que la partie, à l'extrémité nord de sa voie principale entre Saint-Grégoire et Victoriaville, soit un parcours de 30.4 milles.

La propriété du chemin de fer sur ces deux lignes a été inspectée et des enquêtes ont été faites par les officiers de la Commission aux endroits les plus importants le long de chacune de ces deux lignes. Ces requêtes furent par la suite entendues par la Commission à des endroits situés près des lignes de chemin de fer en question, endroits que l'on a jugés les plus convenables pour la majorité des intéressés.

L'embranchement Saint-Hyacinthe-Bellevue dessert plusieurs paroisses importantes qui représentent une population assez considérable, laquelle, par l'abandon de cette ligne se trouverait sérieusement affectée. La Commission a considéré qu'il n'était pas dans l'intérêt public de discontinuer le service sur cette ligne et a refusé d'accorder la requête.

La section de ligne Saint-Grégoire-Victoriaville, au nord de la ligne principale, fait raccordement à Victoriaville avec la ligne Québec-Richmond de la compagnie des chemins de fer Nationaux du Canada. A Richmond, on peut faire raccordement avec des lignes qui passent à travers les plus importantes cités et villes de la partie sud de la province de Québec et des Etats-Unis, de même qu'avec des centres situés à l'ouest du Nouveau-Brunswick, De Saint-Grégoire, la ligne principale se prolonge à l'ouest vers Nicolet, Sorel, Saint-Lambert et de là jusqu'à Montréal, et au nord elle se prolonge jusqu'à Doucet's-Landing où se fait un raccordement avec des traversiers pour se rendre à Trois-Rivières et à d'autres endroits situés au nord du fleuve Saint-Laurent. Ces traversiers font le service, jour et nuit, durant la saison de navigation et font le transport des voyageurs et des marchandises. Les besoins et la commodité publics exigeaient la continuation de l'exploitation de cette ligne, et la requête a alors été refusée.

La ligne d'embranchement Saint-Léonard-Nicolet, 14.7 milles, constituait autrefois un lien important entre Nicolet et la ligne principale allant vers le sud et passant à la Jonction de Saint-Léonard. Depuis le fusionnement de l'ancienne ligne du chemin de fer Grand-Tronc entre Victoriaville et Doucet's-Landing avec les chemins de fer Nationaux du Canada en 1923, et depuis que, en vertu du Statut 19-20 Geo. V. Chap 15, de 1929, l'ancien chemin de fer Montreal, Quebec and Southern est devenu aussi une partie du réseau des chemins de fer Nationaux du Canada, la ligne Saint-Léonard-Nicolet a perdu beaucoup de son importance comme route ferroviaire d'entier parcours, vu qu'elle est parallèle à la section de la ligne principale allant vers le nord, laquelle section s'étend de Saint-Grégoire à la Jonction d'Aston, 12.6 milles.

Les distances indiquées entre ces lignes parallèles sont les suivantes: de Saint-Léonard à Aston-Jonction, 8.0 miles; de Sainte-Monique à Saint-Célestin, environ 5 milles, et de Nicolet à Saint-Grégoire, 6.5 milles, avec raccordements suffisants par voie publique. Entre la Jonction de Saint-Léonard et Saint-Grégoire via Nicolet, le parcours milliaire par voie ferrée est indiqué comme étant de 21.2 milles, et la route la plus courte via la Jonction d'Aston comme étant de 20.6 milles.

Lors de l'audition de la cause à Nicolet, le 17 mai 1935, une partie de la preuve qui a été faite se rapportait aux deux lignes parallèles, et il fut compris que la preuve par rapport à ces deux requêtes serait considérée conjointement.

> M. Rand: "Je crois qu'il serait mieux de considérer les deux causes ensemble pour la raison que les districts concernés se touchent et qu'il existe des intérêts communs entre ces deux lignes."

Le Commissaire en chef suppléant: "Je crois que vous avez raison". (Preuve, vol. 622, p. 967).

Les états soumis par la compagnie du chemin de fer pour ce qui concerne ces deux lignes étaient les suivants: —

RECETTES TOTALES

	Saint-Léonard-Nicolet	Saint-Grégoire-Victoriaville
1930-1931	$ 10,311 00	$ 15,473 00
1933	3,184 00	6,943 00
1934	3,953 00	7,831 00
DÉPENSES		
1930-1931	$ 34,521 00	$ 78,746 00
1933	24,937 00	45,256 00
1934	27,746 00	40,269 00
PERTE DU RÉSEAU		
1930-1931	$ 24,210 00	$ 63,274 00
1933	21,753 00	38,313 00
1934	23,813 00	32,428 00
CHARGEMENTS DE WAGON		
1930-1931	70	118
1933	23	32
1934	34	40

Une analyse de ces états démontre que la perte du réseau sur la ligne St-Grégoire-Victoriaville a considérablement diminué de 1930 à 1934. A part cela, il y a eu le trafic des marchandises à chargements complets d'entier parcours sur cette ligne, au sujet duquel on ne semble pas donner crédit pour le parcours milliaire sur une base de tant pour cent, et il n'y a rien non plus pouvant indiquer le montant de recettes en argent comptant perçu par les conducteurs.

La situation au sujet de la ligne d'embranchement St-Léonard-Nicolet est différente, vu qu'il n'y a pas eu d'améliorations substantielles de 1930 à 1935. La perte du réseau attribuée à cette ligne d'embranchement fut en 1930-1931 de $1,646.94 par mille, et en 1934, $1,613.13 par mille.

D'après les chiffres ci-dessus, on constatera que la perte du réseau pour l'exploitation de ces lignes parallèles s'est élevée à la somme de $87,480.00 pour la période indiquée de 1930-1931; pour l'année 1933, cette perte s'est élevée à $60,066.00, et pour l'année 1934 à $56,251.00. En plus de ces pertes, on doit ajouter les frais d'entretien remis à plus tard.

Le revenu provenant du trafic des voyageurs indiqué comme étant de $1,971.00 pour 1930-1931, représente assez justement, tel qu'allégué, le revenu pour cette période. Les états soumis pour les années 1933 et 1934 n'indiquent pas les remises en argent comptant faites par les conducteurs. Un état additionnel qui vient d'être produit par la compagnie du chemin de fer comprend toutes les recettes provenant du trafic des voyageurs, et démontre pour l'année 1933 des recettes se chiffrant à $750.00, pour 1934, à $1,060.00, et pour 1935, à $1,418.00. Le revenu total sur cette ligne provenant du trafic de toute sorte est indiqué comme s'élevant à la somme de $6,443.00 pour l'année 1935.

La ligne traverse une région agricole peuplée de colons dispersés çà et là. La fabrication du beurre et du fromage constitue la principale industrie, bien qu'il y ait aussi de petits moulins à scie locaux.

Il y a un service d'autobus entre Drummondville et Trois-Rivières, et il y a de bons chemins de gravier dans tout le district. Le village de Sainte-Monique est le seul village qui se trouve sur le parcours de la ligne, étant situé à 6·5 milles de Nicolet et à 8·2 milles de la jonction de St-Léonard. On évalue la population du village de Ste-Monique à 250 habitants.

L'abandon de l'embranchement Nicolet-St-Léonard laisserait néanmoins à Nicolet et à St-Léonard des raccordements ferroviaires à l'est et à l'ouest, et n'affecterait pas l'échange du trafic par rail entre les centres commerciaux situés au nord et au sud du fleuve St-Laurent via Doucet's Landing, pourvu que

l'exploitation de la ligne de St-Grégoire-Victoriaville continue d'être pourvue de raccordements suffisants à la jonction d'Aston. La distance pour se rendre à la Jonction de St-Léonard et aux endroits situés à l'ouest est plus courte d'une fraction par la Jonction d'Aston que par Nicolet.

Il est évident d'après les pièces au dossier que le trafic ferroviaire n'est pas assez considérable pour justifier le maintien de deux lignes parallèles dans ce territoire. La continuation de l'exploitation de la ligne Nicolet-St-Léonard et son entretien imposerait à la requérante une charge injuste sur ses ressources pécuniaires. Avec d'autres raccordements ferroviaires accessibles en deça d'une distance raisonnable, l'abandon projeté n'offrirait pas au public des inconvénients sérieux.

En vue des faits que cette cause comporte, je me trouve en désaccord avec le jugement et les constatations du commissaire en chef suppléant au sujet de cette requête. Quant à l'espect légal auquel il a fait allusion en cette cause, mes vues sont analogues à celles que j'ai exprimées dans la cause de la requête du C.P.R. relative à la Subdivision d'Orford, rapportée au *Vol. 25 des Jugements et Ordonnances de la Commission, p. 473,* et je ne vois rien d'incompatible dans le fait que la Commission exerce ses pouvoirs en vertu de l'article 165A dans la présente requête de concert avec les dispositions de l'article 153 de la Loi des chemins de fer.

Considérant tous les faits de cette cause, j'accorderais la requête, l'ordonnance à être rendue devant devenir en force après soixante jours à compter de la date de son émission. La compagnie du chemin de fer devra procurer un service de trains suffisant entre Nicolet, Doucet's Landing et la Jonction d'Aston pour faire raccordement avec les trains de la ligne principale à la Jonction d'Aston, de même qu'elle devra fournir des facilités convenables de station et de voie d'évitement pour les besoins du trafic.

OTTAWA, le 1er avril 1936.

Le Commissaire Norris s'est rallié au jugement ci-dessus.

GARCEAU, F. N., Commissaire en chef suppléant: (dissident)

Ce tronçon de chemin de fer dont on veut cesser l'exploitation fait partie de l'ancienne ligne de la compagnie de chemin de fer Drummond County, laquelle fut achetée par le gouvernement en 1898 pour être ajoutée au réseau Intercolonial. Elle relie la ville de Nicolet à Drummondville, par St-Léonard.

La ville de Nicolet a une population d'à peu près 4,000 personnes. Il s'y trouve de nombreuses institutions religieuses et d'éducation; c'est la résidence de l'Evêque qui dirige une population de près de 100,000 âmes. C'est là que se trouvent les hôpitaux et l'orphelinat du diocèse. Il y a aussi quelques manufactures, un marché public, un Bureau d'Enregistrement, une Unité Sanitaire et une Cour où siège la Cour Supérieure de la Province de Québec.

Le mémoire soumis par son Excellence l'Evêque de Nicolet ainsi que les différentes résolutions reçues des Chambres de Commerce et des municipalités de cette région, démontrent clairement la valeur des rapports de cette ville avec la population des comtés de Nicolet, Arthabaska, Drummond et partie de Bagot. La preuve a démontré son importance commerciale et industrielle.

Les revenus de la gare de Nicolet se chiffrent à $30,000 ou $35,000.

La ville de Nicolet a donné des subsides au chemin de fer Drummond County pour la construction et l'exploitation de ce chemin de fer entre Nicolet et Drummondville — voir le paragraphe 2 du contrat au dossier N° 28563.181, mentionné dans les télégrammes produits par monsieur le Juge Trahan et par

M. Grenier, C.R., lors de l'audition. Ce paragraphe, tel qu'amendé sur demande de la compagnie du chemin de fer Drummond County, se lit comme suit:

> "The said sum of Ten Thousand Dollars shall not be paid to the said company until three months after the completion of its railway, that is to say, until trains are operated between Nicolet Harbour and Drummondville, without interruption."

De plus, il y a dans ce contrat une disposition qui a été ratifiée par un règlement de la ville de Nicolet et qui se lit comme suit:—

> "The said company must unite by means of a railway between now and October 1890 the Town of Drummondville to the Town of Nicolet and the Harbour if the work of said Harbour is completed; and, in case the said company extends its railway as far as Doucet's Landing or Ste. Angele, the railway must pass by the said Town of Nicolet before continuing on to Doucet's Landing or Ste. Angele."

Ce chemin de fer a aussi reçu des subsides du gouvernement de la province de Québec—chap. 91, 50-52 Victoria, par. 2 de l'article 6—de $4,000 par mille, pour une distance de 39 milles, de Drummondville à Nicolet ou Doucet's Landing.

Les chemins de fer Nationaux du Canada ont demandé, le 9 septembre 1931, à la Commission des chemins de fer de leur permettre d'abandonner le service de tous trains-passagers entre St-Léonard et Nicolet. N'ayant eu aucun succès sur cette requête, le 13 avril 1932, ils ont demandé un changement d'horaire dans le service de leurs trains et, enfin, le 18 janvier 1935, ils ont fait la présente demande, alléguant un déficit de $22,000 durant l'année précédente.

A chaque fois, les corporations intéressées se sont opposées énergiquement à ces requêtes.

Les changements d'horaire ont causé de graves embarras et des pertes. Il y a au dossier une plainte de monsieur Descoteaux, en date du 30 avril 1935, dans laquelle il établit qu'il a été obligé de canceller un contrat à propos de la vente de son lait à Montréal, subissant une perte annuelle de ce chef de $500 au moins, ajoutant que les cultivateurs de l'endroit perdaient comme lui proportionnellement à l'importance de leur production. Ils sont environ 200. Je reviendrai sur ce sujet.

Pour rendre justice à cette requête du chemin de fer, il est nécessaire de considérer ce qu'elle entraîne non seulement pour Nicolet et Ste-Monique mais aussi pour une partie notable de la province.

La ville de Nicolet est un centre éducationnel et religieux de première importance, qui sert à ces fins une population de près de 100,000 âmes, tel que dit par Monseigneur Camirand; mais ce n'est pas le point terminal logique des trains, pas plus que St-Léonard, comme le veut le service actuel. Les trains devraient continuer à Doucet's Landing, relié à la rive nord par un traversier et donner l'avantage à une population de 100,000 âmes et au trafic de cette région de profiter de ces trains.

En regardant la carte de la province, l'on voit trois lignes de chemin de fer qui convergent à Doucet's Landing, reliées à Trois-Rivières, comme je viens de le dire, par un service de bateau. C'est à cet endroit que devrait se déverser tout le commerce qui se fait sur la rive nord et la rive sud du Saint-Laurent dans la région centrale de la province de Québec.

Le fleuve Saint-Laurent divise en deux la province. La partie la plus populeuse, si l'on exclut Montréal, est la rive sud et il n'y a de communication entre ces deux rives qu'à Montréal, Trois-Rivières et Québec. C'est donc là, nécessairement, que s'embouteille tout le commerce et c'est pourquoi l'initiative privée a bâti ces lignes convergentes que l'avocat du chemin de fer Canadien National appelle parallèles.

Chacune de ces lignes de chemin de fer dessert une partie déterminée du territoire centre et sud-est de la province de Québec.

L'embranchement qui va de Doucet's Landing à Victoriaville, la région traversée par l'ancien Grand Tronc, les comtés de Nicolet, Arthabaska, Wolfe, Richmond, Sherbrooke, amène ou pourrait amener à Trois-Rivières et sur la rive nord le public et le commerce de cette région et des Etats de la Nouvelle Angleterre, ou vice versa.

L'autre, qui passe par Nicolet et Saint-Léonard amène ou pourrait amener à Trois-Rivières, et vice versa, les personnes et les marchandises de St-Hyacinthe, Drummondville et des stations intermédiaires.

Quant à la troisième, Montréal-Sorel-Nicolet-Doucet's Landing, elle ne sert qu'un territoire limité sur les confins du fleuve de Montréal à Doucet's Landing et si on peut lui confier, sans inconvénient, tout le trafic de Montréal et de ces divers points, il n'en reste pas moins vrai que, si les embranchements susmentionnés étaient abandonnés, tout le trafic du comté de St-Hyacinthe et au nord de ce comté, de même que celui de toute la partie sud-est de la province de Québec, ne pourrait être dirigé sur Trois-Rivières que par un grand détour en passant par Montréal ou encore en passant par Québec. Il en est de même du commerce de Trois-Rivières et des environs avec ces régions.

La requête du chemin de fer pour l'abandon de l'embranchement de Victoriaville à Doucet's Landing a été renvoyée et, partant, Trois-Rivières a accès par le Grand-Tronc à la partie centrale et au sud et sud-est de la province; mais si l'embranchement de Nicolet et St-Léonard était abandonné, tout le commerce et le trafic des comtés de St-Hyacinthe, Bagot, Drummond et partie de Nicolet, seraient absolument privés de toute communication directe par chemin de fer avec Trois-Rivières et Nicolet et, partant, Trois-Rivières et Nicolet avec cette partie de la province.

A l'heure actuelle, à cause d'horaires malheureux, du manque de correspondance, les communications par chemin de fer entre St-Hyacinthe, Drummondville et les stations intermédiaires avec Trois-Rivières, sont virtuellement impossibles à moins de se rendre à Nicolet ou à St-Léonard et coucher à l'un ou l'autre de ces endroits.

Il serait possible en se servant du même personnel, des mêmes trains, de communiquer directement de St-Hyacinthe à Trois-Rivières par Nicolet, avec retour le même jour.

Le train 143 couche à St-Léonard et part de cet endroit à 8.10 de l'avant-midi. Pourquoi ce train-là ne coucherait-il pas à Doucet's Landing, partant de là vers 7 heures pour se rendre à St-Hyacinthe comme il le fait aujourd'hui à la même heure et permettre ainsi au public voyageur de Trois-Rivières ou de Nicolet de se rendre à Drummondville ou St-Hyacinthe ou encore transporter de ces endroits les marchandises qui pourraient lui être confiées?

Il n'en coûterait au chemin de fer aucune dépense additionnelle si ce n'est quelques tonnes de charbon, et le numéro 142 qui part de St-Hyacinthe à 10.30 et se rend à Nicolet à 12.45 pourrait tout aussi bien se rendre à Doucet's Landing et accommoder ainsi le trafic et le public qui voudrait aller à Trois-Rivières. Et ce train qui repart comme N° 141 de Nicolet à 6.30 p.m. partirait aux alentours de 5 heures de Doucet's Landing pour ramener le même jour les passagers ou marchandises à St-Hyacinthe, à Drummondville et aux stations intermédiaires.

Comment peut-on, avec le service actuel, espérer recevoir un patronage du public quand les trains partent à des heures impropres ou encore ne se rendent pas aux endroits où le public et le trafic ont le plus grand besoin de se rendre?

Il ne faut pas considérer cette partie du chemin de fer de Nicolet à St-Léonard isolément du reste de la ligne du chemin de fer, soit à une extrémité, soit à l'autre, mais plutôt comme faisant partie d'une ligne de chemin de fer qui

part de Doucet's Landing et se rend à St-Hyacinthe pour faire raccordement avec les trains qui vont à Montréal, dans les cantons de l'Est ou aux Etats-Unis.

Il ne faut pas oublier l'importance de Trois-Rivières, de Grand'Mère, Shawinigan Falls, au point de vue commerce et transport de passagers et marchandises avec des villes industrielles et populeuses comme Drummondville et St-Hyacinthe.

Aujourd'hui, il est vrai qu'il existe un service d'autobus entre Drummondville et Trois-Rivières mais il n'y en a pas entre St-Hyacinthe et Drummondville. En outre, ce service d'autobus n'existe qu'une partie de l'année et les autobus ne peuvent et n'ont jamais circulé en hiver dans cette partie de la province.

Le commerce entre la rive nord et la rive sud du Saint-Laurent n'est pas ce qu'il devrait être mais il est à prévoir qu'avec un service voulu il deviendrait très important.

Cet embranchement de Nicolet à St-Léonard est le chaînon nécessaire pour les besoins religieux, éducationnels, et d'hospitalisation d'une population, comme l'a dit Monseigneur Camirand, de plus de 35,000 âmes. Il est aussi le trait d'union entre la rive nord du fleuve St-Laurent et cette partie de la région de la province de Québec comprise dans les comtés de Nicolet, Arthabaska, Drummond, Bagot et St-Hyacinthe.

Autrefois il y avait un trafic considérable, bien que les trains sur cette ligne ne se rendissent pas à Doucet's Landing. Depuis l'audition, les chemins de fer ont produit un tableau indiquant que si cet embranchement était abandonné il n'y aurait que 14 chars de fret amenés par d'autres lignes. Ce tableau n'est pas juste et ne donne pas crédit au trafic possible de cette région. Le montant des recettes de Ste-Monique pour l'année 1934 n'est que de $3,933, tandis qu'elles étaient en 1928, de $12,748.70, en 1929, de $14,253.48, et même en 1930, durant la dépression, encore de $9,971.45.

Il faut remarquer qu'en 1928, 1929, 1930, le fret reçu a rapporté plus de $18,000, c'est-à-dire $6,476.01 en 1928, $7,228.42 en 1929, et $4,654.25 en 1930.

Ces revenus du fret reçu, ont été la raison pourquoi la requête des chemins de fer d'abandonner Ste-Monique comme gare avec agent a été refusée en 1931 par le Commissaire Norris et ses collègues, bien que le total des revenus n'a jamais atteint $15,000, tel que requis par les ordonnances générales N°s 54 et 119.

Ces chiffres démontrent le trafic d'alors à cet endroit et si nous examinons l'horaire actuel des trains, nous avons une des raisons pourquoi ces revenus sont tombés en bas de $4,000.

Une autre, en 1929, les chemins de fer Nationaux du Canada ont acquis le chemin de fer de Montréal-Sorel-Nicolet et le trafic qui provient du chemin de fer Nicolet et Saint-Hyacinthe, est en partie crédité a la ligne de chemin de fer Montréal-Sorel. Voir le témoignage de M. Charron, page 1005:

Q. Maintenant, monsieur Charron, voulez-vous dire aux commissaires si vous tenez des comptes séparés pour la branche Sorel à celle de Léonard.

R. C'est le même compte. Tout le fret de la station à Nicolet est tablé dans un seul état. . .

En 1932 alors que la dépression était très aigüe, que les prix payés pour les produits de la ferme étaient au minimum, les chemins de fer ont réussi à retirer l'agent de la gare Ste-Monique, bien que les recettes eussent été en 1931 de $7,259.77 et le fret reçu de $3,824.48.

La dépression, l'absence d'un agent à la station de Ste-Monique, le détournement du fret de cette ligne à la ligne Montréal-Sorel ont beaucoup contribué à cette baisse des recettes. Un autre facteur, cette diminution de recettes est la préférence de 4c. par cent livres, donnée en faveur des convois de grains arrivant à Trois-Rivières. Cette préférence était d'abord de 7½c. par 100 livres et bien

qu'elle ne soit plus que de 4c. les commerçants, les consommateurs de la rive sud trouvent avantageux de faire consigner leurs grains à Trois-Rivières.

Cette différence de taux a provoqué une recrudescence du transport par camion, et nous avons la preuve de ce fait par M. Gaudet, un marchand en gros de Aston, qui déclare que ce désavantage dans les taux, forcent les commerçants et marchands d'utiliser le service des camions.

Ces tarifs préférentiels favorisent la centralisation au dépens du développement normal du pays, agissent au détriment des chemins de fer qui sont obligés souvent de faire un plus long parcours pour le même prix qu'un plus court.

La centralisation a été la politique autrefois préconisée et pratiquée, mais l'expérience a depuis démontré son erreur; et il existe un fort mouvement en faveur de la décentralisation. Les chemins de fer semblent ne pas encore réaliser la nécessité de cette décentralisation, et maintiennent encore leurs tarifs de faveur à certains centres.

Avec des taux, un service et des correspondances raisonnables, le chemin de fer pourrait prospérer et doit ce service à cette population industrielle et agricole.

Il faut aussi se rappeler que dans Québec il n'y a qu'un mille de chemin de fer pour chaque 559 habitants, tandis que dans la Saskatchewan il n'y en a que 108 pour chaque mille et dans l'Alberta, que 117, dans l'Ontario que 302·9.

Je cite ces chiffres pour établir, que dans Québec les chemins de fer ont un champ d'exploitation plus avantageux que dans aucune autre province. Il n'y a aucune raison lorsqu'il y a la population, le trafic, d'abandonner une ligne de chemin de fer nécessaire à l'industrie, à l'agriculture, aux institutions éducationnelles et d'hospitalisation de la région.

Est-ce que les contrats mentionnés à la page 2 de ce jugement engagent la compagnie des chemins de fer Nationaux du Canada à fournir un service de trains permanent entre Nicolet et Drummondville?

Ils ne sauraient être interprétés autrement.

La ville de Nicolet a payé en argent comptant un octroi de $10,000 dans le but unique d'obtenir un service de trains permanent (sans interruption) avec Drummondville (Voir rapports en chancellerie de Grant, Vol. 25, p. 52 et suivantes pour ce qui est de l'interprétation des termes d'un contrat).

L'obligation ci-dessus consentie par le chemin de fer du Comté de Drummond, ayant dûment et légalement le pouvoir de passer tel contrat, est devenue une obligation du chemin de fer Intercolonial ou du gouvernement, et finalement des chemins de fer Nationaux du Canada.

Lorsque le chemin de fer du Comté de Drummond fut vendu au gouvernement pour faire partie du réseau de l'Intercolonial, une loi spéciale fut passée par le Parlement, 62-63 Victoria, chap. 6, donnant au Gouverneur-en-Conseil l'autorisation voulue d'acquérir "toute l'entreprise de ce chemin de fer, y compris sa ligne principale et ses embranchements, de même que toutes ses bâtisses, structures et accessoires." On devait déduire du montant à être payé pour le prix d'achat, les octrois payés au chemin de fer du comté de Drummond par le gouvernement fédéral.

L'arrêté-en-conseil 2338 du 4 novembre 1899 décrète: ...Ledit acte, en plus de la clause insérée dans ladite loi par rapport auxdites charges, engagements ou servitudes, devant contenir telles dispositions qui, de l'avis du ministère de la Justice, protégeront le gouvernement contre toutes réclamations à propos de terrains ou de dommages aux terrains, torts ou autres qui pourraient survenir de toute prétendue action ou omission d'action de la part de la compagnie du chemin de fer avant la date de la mise à exécution dudit acte de transport.

Le gouvernement devait être et il fut libéré de toutes réclamations par rapport aux dettes du chemin de fer du comté de Drummond, et afin d'assurer une telle protection, un certain montant d'argent fut mis de côté pour effectuer tels paiements, lorsque requis. Les octrois provinciaux et municipaux n'y furent pas mentionnés ni remboursés.

On peut justement et légalement affirmer qu'en l'absence de toute disposition contraire dans la loi spéciale ou l'arrêté en conseil, le contrat intervenu entre la ville de Nicolet et l'ancienne compagnie de chemin de fer engage aussi bien l'acquéreur que le vendeur.

La présente requête faite par la compagnie du chemin de fer est implicitement une requête présentée à la Commission pour libérer la compagnie d'une obligation contractuelle, pour laquelle, elle a dûment reçu considération.

La Commission est l'autorité constituée par le Parlement pour voir à ce que les chemins de fer procurent au public un service de trains convenable, mais non pas pour les libérer des obligations qu'ils ont dûment contractées en ce qui concerne le service.

Il est vrai que la Commission a le pouvoir discrétionnaire, "lorsqu'une plainte lui est faite de la part ou en faveur de la Couronne, ou d'une corporation municipale ou autre, et d'une autre personne lésée, que la compagnie a violé ou enfreint un contrat existant entre la plaignante et la compagnie — ou, de la part de la compagnie, que cette corporation ou personne a violé ou enfreint un contrat existant entre la compagnie et cette corporation ou personne, de rendre l'ordonnance qui lui paraît raisonnable et opportune, et dans ladite ordonnance elle peut, à sa discrétion, ordonner à la compagnie ou à cette corporation ou personne, de faire les choses nécessaires à l'exécution convenable de ce contrat... ", mais dans le présent cas, il n'existe pas de telle plainte; au contraire, on demande à la Commission la permission de violer, ou plutôt de résilier un contrat dûment passé, et la seule autorité que la Commission puisse avoir dans les circonstances est, dans mon opinion, celle que lui confère l'article 153 de la Loi des chemins de fer qui se lit comme suit: —

> " 153. (1) Nonobstant toute stipulation insérée dans un traité conclu ou sanctionné suivant les dispositions des deux articles qui précèdent, une action, opération ou chose faite, effectuée ou confirmée sous l'autorité ou en vertu de la présente loi ou de la loi spéciale, antérieurement à la date de l'entrée en vigueur de ce traité, est valable tout comme si ce traité n'avait jamais été exécuté; et ce traité est subordonné, sans y préjudicier aucunement, à toute semblable action, opération ou chose, et à tous droits, responsabilités, réclamations et prétentions, présents ou futurs, qui pourraient découler ou résulter de cette action, opération ou chose, si ce traité n'était jamais devenu exécutoire.
>
> " (2) S'il s'agit d'un traité de fusion, la compagnie née de la fusion, pour ce qui est de toutes les actions, opérations et choses ainsi faites, effectuées ou confirmées, et de tous ces droits, responsabilités, réclamations et prétentions, occupe à toutes fins la position des compagnies parties au traité de fusion, et les représente; et la généralité des dispositions du présent article n'est censée restreinte par aucune loi spéciale, à moins qu'elle ne mentionne expressément le présent article et n'en limite ou n'en restreigne expressément la portée. S.R.C. 37, art. 363."

La Commission est un tribunal, une cour d'archives, et pour les fins de la présente loi—la loi des chemins de fer—a pleine juridiction pour instruire, entendre et juger toute question tant de droit que de fait. (Article 32, par. 2).

Le contrat ou la convention ci-dessus mentionnée étant un de ceux, qu'a en vue l'article précité de la loi des chemins de fer, la Commission doit à mon avis décider de la validité de ce contrat, et ne peut pas référer cette question aux tribunaux civils, parce que la Commission est l'autorité désignée, à l'exclusion des tribunaux civils, pour décider de toute question d'abandon de lignes ou de service de trains.

L'article 165A qui dit: " La Compagnie peut abandonner l'exploitation de toute ligne de chemin de fer, avec l'approbation de la Commission, et nulle compagnie ne doit abandonner l'exploitation de quelque ligne de chemin de fer sans

cette approbation ", révoque les droits que possédaient autrefois les chemins de fer, quant à l'abandon de lignes, en l'abscence de dispositions contractuelles, légales et licites ou statutaires au contraire.

Le commissaire Stoneman a corroboré la même opinion dans un jugement qu'il a rendu récemment et auquel se sont ralliés le commissaire en chef adjoint McLean et le commissaire Norris au sujet de la requête du C.N.R. demandant d'être autorisé à discontinuer l'exploitation d'une partie de sa ligne sur sa Subdivision d'Orono, entre Ronnac et Greenburn, Ont., (Dossier N° 39310.23) où il disait —

> " Before the year 1933, unless there was a statutory or contractual provision requiring a railway company to operate its road, it was at liberty to abandon the whole or any portion of its line."

Cet article fut inséré dans la Loi des chemins de fer comme mesure de protection pour le public. Il n'a aucune portée dans le présent cas. Même en son absence, la compagnie du chemin de fer aurait été légalement obligée par le contrat mentionné ci-dessus d'obtenir l'autorisation de la Commission avant d'abandonner une ligne d'embranchement.

La Commission a traité de cette question sous tous ses aspects, dans les diverses causes que j'ai mentionnées dans mon jugement au sujet de la Subdivision d'Orford (Dossier 39309) auxquelles je me réfère.

Dans la cause, dossier N° 39309, les commissaires Stone et Norris s'expriment ainsi dans leur jugement: —

> " L'interprétation donnée à l'article 35 de la Loi des chemins de fer par le commissaire en chef suppléant dans son jugement en cette cause empêche, si elle est juste, la Commission d'autoriser toute discontinuation d'exploitation de lignes de chemin de fer; et l'article 165A qui est devenu en vigueur le 23 mai 1933 (chap. 47, 23-24 Geo. 5) ne saurait s'appliquer à nulle compagnie de chemin de fer à qui on aurait accordé et payé des subsides aux termes d'un contrat.
>
> "On ne saurait logiquement présumer que le Parlement a eu l'intention de restreindre ainsi les pouvoirs conférés à la Commission, et c'est pourquoi je ne saurais être d'accord avec le jugement du Commissaire en chef suppléant ni avec ses conclusions telles que basées sur les faits présentés en cette cause."

Cette décision concernant l'article 35 de la Loi des chemins de fer constitue une négation de la décision rendue par la Commission dans la cause de la Cité de Hamilton vs la compagnie du Grand Tronc, rapportée à 21 C.R.C. p, 211, à l'effet "Qu'il faut indiquer d'une manière spécifique qu'il y a eu violation d'un contrat pour donner juridiction à la Commission en vertu des Statuts 8 & 9 Edouard VII, ch. 32, article 1 (Article 35 de la Loi des chemins de fer)."

Dans la cause No. 39309 comme dans celle-ci il n'y a pas eu de plainte ni de preuve qu'il y avait eu violation spécifique d'un contrat.

La décision rendue dans la cause que je viens de citer, savoir (la Cité de Hamilton vs la compagnie du Grand Tronc) est absolument conforme à l'article 35 de la Loi des chemins de fer qui se lit comme suit:—

> "Lorsqu'il y a une plainte de la part ou en faveur de la Couronne ou d'une corporation municipale ou autre ou d'une autre personne lésée, que la compagnie a violé ou enfreint un contrat existant entre la plaignante et la compagnie—ou, de la part de la compagnie, que cette corporation ou personne a violé ou enfreint un contrat existant entre la compagnie et cette corporation ou personne—. . .la Commission doit entendre tout ce qui concerne la prétendue violation ou infraction, et rendre l'ordonnance qui lui paraît raisonnable et opportune; et dans ladite ordonnance elle peut, à sa discrétion, ordonner à la compagnie

ou à cette corporation ou personne, de faire les choses nécessaires à l'exécution convenable de ce contrat ou de s'abstenir de faire les choses qui en constituent une violation ou une infraction."

En vue de la décision précitée sur l'interprétation de l'article 35, il est évident qu'il ne saurait avoir aucune portée dans la présente cause.

C'est pourquoi nous devons recourir à d'autres dispositions de la loi pour ce qui est des contrats. L'article 153 traite de contrats semblables à ceux qu'on a produits dans la cause précitée ainsi que dans la présente. Cet article, suivant moi, est la loi qui doit guider la Commission dans la décision à rendre en cette affaire.

La Commission n'a pas le pouvoir discrétionnaire de mettre de côté des contrats ou de les ignorer, ou encore de les référer aux tribunaux civils. Dans bien des cas, comme il a été établi dans la cause précitée, la Cour Suprême en a décidé ainsi. La Commission ayant le pouvoir de décider d'une question de droit, et telle question de droit étant exclusivement de sa juridiction, doit décider de la validité de ces contrats et de leur valeur obligatoire à l'égard des chemins de fer.

Pour ces raisons et celles mentionnées dans mon jugement relativement à la Subdivision d'Orford, je ne puis accepter la décision de mes collègues.

La première partie de l'article 165A décrète:—

> "Une compagnie peut abandonner l'exploitation de toute ligne de chemin de fer avec l'approbation de la Commission."

Cette juridiction générale accordée à la Commission pour ce qui est de l'abandon de lignes de chemin de fer doit être considérée de concert avec les autres articles de la Loi des chemins de fer. Le chapitre 33 du Statut 22-23 Geo. V., ne s'applique pas.

L'article 22 du chapitre 1 des Statuts Revisés du Canada de 1927, décrète:—

> "Une loi modificatrice doit, tant que la teneur de cette loi le permet, s'étendre comme ne faisant qu'une avec la loi qu'elle modifie."

Nous pouvons conclure que l'article 153 de la Loi des chemins de fer a encore la même autorité qu'avant l'adoption de cet article. La Commission en agissant sous l'autorité de l'article 165-A est encore obligée de prendre en considération l'article 153, dont les termes sont si spécifiques et concluants, et qui se lit comme suit:—

> "...et la généralité des dispositions du présent article n'est censée restreinte par aucune loi spéciale, à moins qu'elle ne mentionne expressément le présent article et n'en limite ou n'en restreigne expressément la portée."

L'abandon de lignes de chemin de fer, même lorsqu'il n'est pas interdit par quelque moyen légal, doit être considéré avec défaveur. Il implique la destruction d'actifs dispendieux, de graves inconvénients pour les localités, la perte d'emplois pour plusieurs, la démoralisation pour ceux qui en sont affectés, de même que d'autres réactions possibles contre le bien-être public.

Les chemins de fer peuvent montrer leurs déficits actuels d'exploitation, mais il est impossible pour le public d'exposer devant un tribunal toutes les conséquences pouvant résulter d'un tel abandon—les pertes et désavantages qu'il devra supporter, la dépréciation des propriétés, la désertion de la population vers des centres plus favorisés. Qui peut déterminer le facteur précis, moral ou matériel qui donne à un homme la volonté de poursuivre ses activités? Et quel est le problème national? Celui de résoudre la question du chômage, de maintenir l'individu à son emploi, de procurer du travail à la jeunesse

errante et à tous ceux qui sont en état de travailler, de faire renaître la foi et l'espérance dans l'avenir. L'abandon de lignes de chemin de fer est la négation des moyens de parvenir à cette fin.

Un contrôle efficace des voituriers qui font usage des routes, et, des conditions économiques améliorées peuvent changer les pertes actuelles du chemin de fer en des profits; mais que penser de la position où se trouve le cultivateur incapable de supporter les plus grands inconvénients qui résulteraient de l'abandon du chemin de fer? Que penser de ceux qui perdraient leurs emplois, leurs salaires annuels de près de $18,000?

Le remède aux difficultés des chemins de fer est entre les mains de ceux-ci et des pouvoirs du Parlement, tel que rapporté par la Commission du Commerce Inter-Etats au vol. ex parte 115, p. 70: (*mutatis mutandis*)

> "The answer to the problem before us will be found (1) in the return of a normal condition of business activity and movement, to be achieved only through continued and patient co-operation of carriers and shippers, with the thought of present profit submerged for the moment, even to the point of *personal sacrifice* in the interest of the speedier resumption of better conditions for all; and (2) by such prompt action on the part of Congress as will insure that competition between the various forms of transport agencies will be on equal and fair terms, with the welfare of a national transport machine as the objective."

Les chemins de fer prétendent que les pertes d'exploitation ont été de $22,000 en 1934, et de $24,000 en 1933.

La preuve n'est pas assez concluante pour justifier cette prétention, et même si elle l'était, on ne devrait pas accorder la requête. Les pertes actuelles d'exploitation sont la conséquence de conditions temporaires telles que la dépression, le manque de service convenable pouvant encourager tout trafic possible surtout avec la rive nord; les tarifs des marchandises et des voyageurs étant trop élevés pour les moyens du public.

La Commission du Commerce Inter-Etats a décidé récemment que les chemins de fer ne devaient pas charger plus que deux cents du mille pour ce qui concerne le trafic des voyageurs L'expérience a démontré que dans les Etats de l'Ouest et du Sud les chemins de fer avaient augmenté leurs recettes considérablement en abaissant ainsi leurs tarifs. Les excursions périodiques, organisées par les chemins de fer en Canada, confirment ce résultat

Les officiers des chemins de fer n'ont pas encore acquiescé à l'adoption de cette politique, mais ils ont déclaré qu'ils étudieraient la question, et il n'y a pas de doute qu'ils en arriveront aux mêmes conclusions.

L'enquête faite aux Etats-Unis par des experts durant deux années a aussi démontré que les chemins de fer doivent abaisser leurs tarifs des marchandises afin de faire avantageusement concurrence avec les autres voituriers. Ce rapport dit: "Ils (les chemins de fer), lorsque bien équipés et aménagés, sont les voituriers les plus rapides et les moins dispendieux." Même sans un contrôle efficace, contre la concurrence des véhicules-moteurs, les chemins de fer, d'après cette enquête, peuvent, dans la plupart des cas, avoir l'avantage sur leurs concurrents.

Vu la densité de la population, le trafic possible avec de meilleures communications, d'avantageux raccordements avec la rive nord, avec des trains circulant à des heures convenables, on peut s'attendre à ce que les opérations ferroviaires deviennent profitables.

Je le répète, les chemins de fer peuvent démontrer leurs déficits actuels d'exploitation, mais il est impossible d'établir d'une manière positive jusqu'à quel point le public aurait à souffrir des conséquences d'un tel abandon.

Nous savons dans ce cas-ci que les employés du chemin de fer perdraient environ 81% de la somme économisée par la compagnie. Cette proportion est établie par le chemin de fer lui-même, voir le rapport de ses opérations pour

l'année de 1933, page 5, où il est dit que les économies réalisées à même l'élément travail étaient dans la proportion de 81·17% de la somme totale épargnée durant l'année.

Nous savons également que le service actuellement donné a occasionné aux cultivateurs de Ste-Monique une perte de milliers de dollars. M. Descoteaux, dans sa lettre à la Commission, dit qu'il subit une perte annuelle de $500 parce qu'il ne peut pas expédier son lait à Montréal. Nous savons que depuis deux ans ou trois il y a un prix minimum de payé par les commerçants de lait de Montréal. L'an dernier ce prix a été de $1.85 les 100 livres, et le prix local payé par les fabriques de lait est d'environ la moitié de cette somme.

Il y a environ 200 cultivateurs à Ste-Monique. Ils ne produisent pas tous en aussi grande quantité que M. Descoteaux, mais je crois qu'on peut dire en toute sûreté qu'il en résulterait une perte annuelle considérable pour chacun d'eux.

Les chiffres fournis par la compagnie du chemin de fer pour ce qui est du trafic du lait à Ste-Monique ne sauraient s'appliquer pour la raison que la loi qui existe actuellement par rapport au prix minimum n'existait pas dans le temps, et les cultivateurs étaient laissés au bon vouloir des commerçants de lait à Montréal.

Nous savons également qu'avec des tarifs raisonnables les habitants de Ste-Monique feraient l'élevage du porc et des bestiaux.

Dans les diverses institutions à Nicolet, il y a environ 900 pensionnaires, et la moitié d'entre eux ont des parents dans le district relié à Nicolet par cet embranchement. L'abandon de cette ligne signifierait qu'un grand nombre de ces pensionnaires seraient obligés de laisser ces institutions parce qu'on ne peut s'attendre à ce que leurs parents fassent les raccordements à Aston pour aller les visiter, car ils seraient obligés de coucher à Nicolet pour ne retourner que le lendemain en payant des prix de passage plus élevés qu'actuellement. Ils arriveraient à Nicolet à 6.20 heures du soir pour ne retourner que dans l'avant-midi suivant et arriver chez eux aux alentours de 4.00 heures de l'après-midi ou plus tard.

Par conséquent si la requête était accordée, la compagnie du chemin de fer économiserait, d'après ses données, la somme de $22,000 tandis que ses employés perdraient environ $18,000; Ste-Monique qui autrefois était une station qui rapportait des revenus d'au delà de $14,000 serait privée de facilités ferroviaires; les institutions de Nicolet qui signifient tant pour les besoins intellectuels et moraux de cette partie du pays, subiraient la perte de centaines de leurs pensionnaires.

Pouvons-nous dire qu'il est dans l'intérêt public de discontinuer l'exploitation de cette ligne, lorsque la compagnie du chemin de fer est tenue légalement de l'exploiter, si on prend en considération le trafic possible que le chemin de fer pourrait se procurer en donnant un service suffisant et convenable, avec des tarifs raisonnables et des raccordements avantageux, surtout lorsque nous savons que les conditions actuelles ne sont que passagères, quand l'expérience a prouvé qu'on a retiré des profits et que le problème du transport doit être prochainement mis à l'étude.

Je renverrais la requête.

Le 25 mars 1936.

ORDER No. 53012

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 165A of the Railway Act, for approval of the abandonment of operation of that portion of the Nicolet Subdivision, in the Province of Quebec, between St. Leonard Junction (mileage 0·00) and Nicolet (mileage 14·7), a total distance of 14·7 miles.

File No. 39310.9

WEDNESDAY, the 15th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Nicolet, May 17, 1935, in the presence of counsel for the applicants, the Town of Nicolet, City of Three Rivers, the Three Rivers Chamber of Commerce, Town of Drummondville, the Government of the Province of Quebec, Mr. Justice Trahan, and Rt. Rev. J. S. H. Brunault, Bishop of Nicolet, and what was alleged,—

It is ordered: That, effective June 15, 1936, the abandonment of operation of that portion of the applicants' Nicolet Subdivision, in the province of Quebec, between St. Leonard Junction (mileage 0·00) and Nicolet (mileage 14·7), a total distance of 14·7 miles, be, and it is hereby, approved: Provided the applicants furnish adequate train service between Nicolet, Doucet's Landing, and Aston Junction connecting with main line trains at Aston Junction, as well as suitable station and siding facilities to take care of the traffic.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52973

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.10

MONDAY, the 6th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Supplement No. 8 to Tariff C.R.C. No. 3, filed by the Maritime Coal, Railway and Power Company, Limited, under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 8 to Tariff C.R.C. No. 3, approved herein, is 42 cents per net ton.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52974

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

MONDAY, the 6th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published between South Devon, New Brunswick, and stations on the Fredericton and Grand Lake Coal and Railway and the New Brunswick Coal and Railway in Supplement 15 to Tariff C.R.C. No. E-4324, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 15 to Tariff C.R.C. No. E-4324, approved herein, are those applicable to and from Fredericton, N.B.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52975

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and Order No. 52903, dated March 20, 1936.

File No. 34822.12

MONDAY, the 6th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in item 675C, to Fredericton, N.B., and all tolls in item 2732 of Supplement No. 32 to Tariff C.R.C. No. E-4742, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 32 to Tariff C.R.C. No. E-4742, approved herein, are as follows:—

Item	Cents per 100 pounds	
675C	14½	
2732	Minimum weight	
to	60,000 lbs.	80,000 lbs.
Fort William, Ont. (lake and rail)	37	35
Hamilton, Ont.	33	31
London, Ont.	33½	31
Montreal, Que.	30½	25
Ottawa, Ont.	33	31
Port Arthur, Ont. (lake and rail)	37	35
Quebec, Que.	30½	27
Toronto, Ont.	33½	31
Trois Rivieres, Que.	31	26
West Fort William, Ont. (lake and rail)	37	35

3. And it is further ordered that Order No. 52903, dated March 20, 1936, made herein, be, and it is hereby, rescinded.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52976

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

MONDAY, the 6th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published under column "P" in 2nd revised page 20 of Tariff C.R.C. No. E-4757, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said 2nd revised page No. 20 of Tariff C.R.C. No. E-4757, approved herein, are as follows:—

Miles	Cents per 100 pounds
Not exceeding 5	7½
Over 5 but not over 15	7½
Over 15 but not over 25	9½
Over 25 but not over 35	11½
Over 35 but not over 50	12½
Over 50 but not over 60	14½
Over 60 but not over 70	16½
Over 70 but not over 85	18
Over 85 but not over 100	19½
Over 100 but not over 120	22
Over 120 but not over 140	24
Over 140 but not over 160	25
Over 160 but not over 190	27½
Over 190 but not over 200	29

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52977

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

MONDAY, the 6th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published to St. Raymond, Quebec, in item 1270 of 3rd revised page 55 to Tariff C.R.C. No. E-4757, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said 3rd revised page to Tariff C.R.C. No. E-4757, approved herein, is 32 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52978

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 6th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in item 63 of Supplement No. 42 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 42 to Tariff C.R.C. No. 851, approved herein, are as follows:—

From	Cents per 100 pounds
Avonport, N.S.	7½
Grand Pre, N.S.	7½
Wolfville, N.S.	9
Kentville, N.S.	10
Berwick, N.S.	10½
Pereaux, N.S.	10½
Canning, N.S.	10½

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52979

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.15

MONDAY, the 6th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published on slack coal to North Devon, N.S., in Supplement No. 5 to Tariff C.R.C. No. 194, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 5 to Tariff C.R.C. No. 194, approved herein, is $1.15 per ton of 2,000 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52980

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.17

MONDAY, the 6th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 40, filed by the Cumberland Railway and Coal Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 40, approved herein, is 6 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52981

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

TUESDAY, the 7th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published to Kingston, Ontario, in item 2732-A of Supplement No. 34 to Tariff C.R.C. No. E-4742, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 34 to Tariff C.R.C. No. E-4742, approved herein, are as follows:—

	Cents per 100 pounds
Minimum weight, 60,000 lbs.	32½
Minimum weight, 80,000 lbs.	30½

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52982

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 7th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Supplement No. 1 to Tariff C.R.C. No. 986, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to be reported at 7½ cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 1 to Tariff C.R.C. No. 986, approved herein, is 9 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52983

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 7th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Supplement No. 2 to Tariff C.R.C. No. 986, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to be reported at 9·1 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 2 to Tariff C.R.C. No. 986, approved herein, is 11·3 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52984

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 7th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 990, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subjection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 990, approved herein, are as follows:—

To	Cents per 100 pounds Minimum 60,000 lbs.	Minimum 80,000 lbs.
Fort William, Ont. (lake and rail)	38	36
Hamilton, Ont.	34	32
Kingston, Ont.	33½	31
London, Ont.	34	31½
Montreal, Que.	32	26½
Ottawa, Ont.	34	31½
Port Arthur (lake and rail)	38	36
Quebec, Que.	30½	27
Toronto, Ont.	34½	32
Trois Rivieres, Que.	32½	27½
West Fort William, Ont. (lake and rail)	38	36

3. That one and one-half cents per 100 pounds be deducted account of water movement.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52985

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 7th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 991, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion of traffic destined to Canadian National Railways' points to be reported as follows:—

	Cents per 100 pounds
Via Truro, N.S.	6.25
Windsor Junction, N.S.	5.5

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of traffic destined to Canadian National Railways' points, of the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 991, approved herein, are as follows:—

	Cents per 100 pounds
Via Truro, N.S.	7.8
Windsor Junction, N.S.	6.9

The normal toll to Truro, N.S., is 10 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 52986

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 7th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 993, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 993, approved herein, is 25 cents per 100 pounds; 1½ cents per 100 pounds to be deducted account of water movement.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53010

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 11th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 987, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 987, approved herein, are as follows:—

Item No.	To	All cents per 100 pounds From Halifax, N.S.	Truro, N.S.
5	Beaver Bank, N.S.	6½	11½
	Mount Uniacke, N.S.	7	11½
	Stillwater, N.S.	8	11
	Ellerhouse, N.S.	8½	11
	Newport, N.S.	8½	11
10	Windsor, N.S.	8½	10
	Brooklyn, N.S.	10	10
	Scotch Village, N.S.	10	8½
	Mosherville, N.S.	10	8½
	Clarksville, N.S.	11	8½
15	Kennetcook, N.S.	11	8
	Patterson's, N.S.	11½	8
	South Maitland, N.S.	13	6½
	Hantsport, N.S.	8½	10
	Avonport, N.S.	8½	10
20	Port Williams, N.S.	10	11
	Kentville, N.S.	11	11½
	Aldershot, N.S.	11	11½
	Mill Village, N.S.	11	11½
	Centreville, N.S.	11½	13

All cents per 100 pounds

Item No.	To	From Halifax, N.S.	From Truro, N.S.
25	Billtown, N.S.	13	13½
	Grafton, N.S.	13	13½
	Somerset, N.S.	13½	13½
	Weston, N.S.	13½	13½
	Kingsport, N.S.	11½	13
30	Coldbrook, N.S.	11½	13
	Berwick, N.S.	11½	13
	Aylesford, N.S.	13	13½
	Kingston, N.S.	13	13½
	Wilmot, N.S.	13½	13½
35	Weymouth, N.S.	15	15
	Hectanooga, N.S.	16½	16½
	Hebron, N.S.	17	17
40	Annapolis Royal, N.S.	12	
	Brazil Lake, N.S.	5½	
	Clementsport, N.S.	12	
	Digby, N.S.	10	
	Hectanooga, N.S.	6½	
	Little Brook, N.S.	8	
	Plympton, N.S.	9	
	Sigogne, N.S.	7	
	Weymouth, N.S.	9	
45	Middleton, N.S.	14	
	Bridgetown, N.S.	14½	
	Yarmouth, N.S.	16½	
	Truro, N.S.	9	
50	Bridgetown, N.S.	22½	
	Middleton, N.S.	25	
55	Church Point, N.S.	6½	

	Miles	Rate	Miles	Rate
65	5	3	125	8½
	10	3½	150	10
	20	4	200	10
	50	5	230	12½
	75	6½	250	12½
	100	7½		
70	15	12	100	27½
	20	12½	120	29
	30	15	130	30½
	35	18	140	30½
	40	18	150	32
	50	19½	170	32
	60	22	180	34½
	70	24	200	34½
	75	25	220	36½
	80	25	230	36½
	85	27½	240	37½
	95	27½	250	37½

All cents per 100 pounds

	Miles	L.C.L.	C.L.
75	5	7	3
	10	9½	3½
	20	11½	4
	30	12½	5
	40	14½	5
	50	16½	5
	60	18	6½
	70	19½	6½
	75	20½	6½
	80	20½	8
	90	22	8
	100	22½	8
	125	25	8½
	150	27½	10
	175	30½	12
	200	30½	12
	230	32	12

80 .....

Miles	Rate	Miles	Rate
5	4½	75	7½
10	5	80	9
20	5	90	9
30	6	100	9
40	6	125	10
50	6	150	11
60	7½	175	11
70	7½	200	11

85 .....

Miles	L.C.L.	C.L.
5	7	3
10	9½	3½
20	11½	4
30	12½	5
40	14½	5
50	16½	5
60	18	6½
70	19½	6½
75	20½	6½
80	20½	7½
90	22	7½
100	22½	7½
125	25	8½
150	27½	10
175	30½	10
200	30½	10

To	From Truro, N.S. L.C.L.	From Truro, N.S. C.L.	Halifax, N.S. L.C.L.	Halifax, N.S. C.L.
90 Middleton, N.S.	25	10	25	10
Bridgetown, N.S.	27½	12½	25	10
Yarmouth, N.S.	32	15	32	14

95 15

All cents per 100 pounds

100 Bridgetown, N.S. 7½

Yarmouth, N.S. 10

105 ..... 6½

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53007

In the matter of the application of G. C. Ransom, agent for and on behalf of carriers in Eastern Canada, that such carriers be permitted to file, on less than statutory notice, a tariff containing reduced rates on lumber, in carloads, from points in Eastern Canada to Official Classification territory in the United States; also to publish connecting link supplements to tariffs containing rates on lumber between the territories named.

File No. 27612.133

TUESDAY, the 14th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that, as a result of reductions made in rates on lumber within eastern United States territory to meet competition of lumber originating on the Pacific coast, it is desired to place Canadian lumber shippers on a relative basis to the destination territory involved, and that application has been made to the Interstate Commerce Commission for authority to put such rates in force on one day's notice after filing,—

The Board orders: That the Canadian carriers may publish, on one day's notice, tariffs and connecting link supplements to tariffs containing reduced rates on lumber, in carloads, from Eastern Canadian points to Official Classification territory in the United States, subject to the necessary authority being received from the Interstate Commerce Commission.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53008

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for permission to correct a rate in item 2145 of Tariff C.R.C. No. E-4775, on less than statutory notice, account of error.

File No. 27612.134

WEDNESDAY, the 15th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that the applicant company, through error, published a rate of 10 cents per 100 pounds to Toronto, Ontario, in item 2145 of the said Tariff C.R.C. No. E-4775.—

It is ordered: That the applicant company be, and it is hereby, permitted to publish and file, on one day's notice, a supplement to the said Tariff C.R.C. No. E-4775 correcting the rate in item 2145 to Toronto, Ontario, to read, "20 cents per 100 pounds."

H. GUTHRIE,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR FEBRUARY, 1936

Railway accidents	241,	with 18 persons killed	and 251 injured.
Railway accidents at highway crossings	10.	with 1 person killed	and 17 injured.
	251	19	268

	Killed	Injured
Passengers	—	36
Employees	9	198
Others	10	34
	19	268

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents	
	QUEBEC
1	Automobile—Driver failed to stop for crossing. Licence N.Y. COM.282-763.
1	Horse-drawn Vehicle—Ran into side of train.
	ONTARIO
1	Automobile—Ran into side of train. Licence Ont. BP-493. (Name and address of driver not given.)
2	Automobile—Ran onto crossing in front of train. Licence Ont. HU-363, B. Cowie, R.R. No. 2, Keene, Ont.; licence Ont. U-3742, Mr. G. Abbott, Glencoe, Ont.
1	Auto Truck—Ran into side of train. Licence Ont. 52-126-C, S. Karasiewuz, Roslyn, Ont.
1	Auto Truck—Ran onto crossing ahead of train and was struck. Licence Ont. 17770-C, C. Norgard, Evans Ave., Islington, Ont.
1	Pedestrian.
	ALBERTA
1	Horse-drawn Vehicle—Zero weather, sleigh boxed in, failed to look out for train.
	BRITISH COLUMBIA
1	Automobile—Ran into side of train. Licence B.C. 45-231.

Of the ten accidents at highway crossings, all occurred at unprotected crossings. Five of the accidents occurred during the daylight hours and five at night.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of the Canadian Pacific Railway Company under section 51 of the Railway Act, for reconsideration in the matter of the highway crossing about 300 feet south of the railway yards at Angliers, Que.; and for an Order rescinding Order No. 51463, dated October 25, 1934, which placed the cost of construction and maintenance upon the applicant company.

File No. 38839

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER:

On October 13, 1933, the municipality of St. Eugene de Guigues applied for a crossing over the Canadian Pacific Railway Company's tracks at Angliers, in the province of Quebec. Angliers is situate in the township of Baby.

On March 5, 1934, the Board authorized the construction of this crossing and by its Order No. 50814 reserved its decision in regard to the apportionment of the cost of construction and maintenance. Subsequently, by Order No. 51463, dated October 25, 1934, the cost of construction and maintenance of the said crossing was ordered to be borne and paid by the Canadian Pacific Railway Company.

On December 17, 1934, the Canadian Pacific Railway Company applied under section 51 of the Railway Act for a re-hearing of the application upon the ground of the discovery of new evidence, and on January 23, 1935, the Canadian Pacific Railway Company submitted a statement in writing of the new evidence which it proposed to place before the Board should its application for a re-hearing be granted. The railway company also intimated that the questions involved in this matter would likely arise in many applications throughout Canada in the future, and that, in the event of a decision of the Board adverse to the railway company's contention, the railway company desired leave to appeal to the Supreme Court of Canada in order that the questions at issue might be finally settled. Counsel for the railway company also urged that it was essential to a proper consideration of the case that the new evidence which it proposed to submit should be placed before the Board and, in the event of an appeal, before the Supreme Court of Canada.

On August 22, 1935, the Board intimated that it was prepared to grant a re-hearing of the application to consider the additional evidence which the railway company desired to submit, after which the case might be re-argued

by the parties interested. After due notice to all parties concerned the application was again heard at the city of Quebec, on 5th day of February, 1936, in the presence of counsel for all parties.

The new evidence submitted by the railway company upon the re-hearing consisted of the following documents:—

1. Certified copies of the Orders in Council of Lord Dorchester dated October 10 and October 30, 1794.
2. Copy of the grant from the Crown to the Interprovincial and James Bay Railway Company of the right of way at the point in question, dated June 12, 1933.
3. Map issued by Department of Interior of portions of Ontario and Quebec including the township of Baby, and showing its boundaries by reference to Lac des Quinze.
4. Cadastral map of part of the township of Baby.
5. Proclamation of the Lieutenant-Governor of Quebec dated June 10, 1895, constituting the township of Baby.

Evidence was also given by witnesses called by the railway company to establish the fact that both lac des Quinze and river des Quinze are navigable waters. This point was not seriously disputed at the hearing by counsel for the municipality.

Additional evidence was also submitted on behalf of the municipality to show the practice which had pertained in the province of Quebec in regard to surveys, and also in regard to grants of Crown lands in respect of allowances or reservations for roads.

The township of Baby in which the crossing in question is located was formally constituted a municipal corporation as of the 15th day of July, 1895, but the lands comprised in the said township remained vested in the Crown, except some lots which had been theretofore granted by the Crown, and the allodial title to the lands involved in this application continued vested in the Crown until the grant of same to the railway company on 12th day of June, 1933. It is to be noted that the cadastral map of the township of Baby for the year 1928 shows no allowance for highways.

The Interprovincial and James Bay Railway Company was incorporated by chapter 66 of the Statutes of Canada, 1901, and was empowered to construct and operate a railway from a point at or near Lumsden's Mill upon the Canadian Pacific Railway to the des Quinze river. The Interprovincial and James Bay Railway subsequently became part of the railway system of the Canadian Pacific Railway Company.

The grant from the Crown to the Interprovincial and James Bay Railway Company dated June 12, 1933, was authorized by Order in Council of April 3, 1933, and it recites that the railway company obtained a right of way through the lands of the Crown for its railway line, in accordance with the Railway Act of the province of Quebec by virtue of certain Orders in Council which are annexed to the deed; that the railway company acquired an absolute deed of ownership in and upon Crown lands actually occupied by its line of railway, and that the Minister of Lands and Forests for the province of Quebec had been duly authorized by Order in Council to execute a deed of transfer and conveyance to the railway company of the rights of property in the lands mentioned in the said deed. This conveyance contains no reservation or other provision respecting roads or road allowances. The grant does contain specific reservations respecting mining lands and lands situate along the shores of lakes and rivers as set out in the said conveyance.

The question at issue in this application briefly stated, is whether the applicant company or the municipality occupies a position of seniority in respect of the crossing in question, and in order to determine this point it becomes necessary to examine two Orders in Council made in the year 1794, at a time when

Lord Dorchester was Governor in Chief of the province of Lower Canada, etc. The first of these Orders in Council bears date October 10, 1794. It provides that a certain report of a committee of the whole Council dated October 2, 1794, be approved and entered. This report is set out in full in the said Order in Council, but the portion of it which bears upon the question involved in this application is as follows:—

> "Report of a Committee of the whole Council, consisting of the Honourable William Osgoode, Francois Baby, and Thomas Dunn, Esquires, on your Lordship's Order of Reference of the 19th ultimo, referring to the Order of January 22 last, respecting the diagram and other matters (unreported upon) therein mentioned.
>
> "May it please Your Excellency:
>
> "In obedience to your Lordship's Order in Council of the 19th ulto. the Committee proceeded to read the original Order of Reference of January 22, 1794; and also the several Reports that have since been made from time to time on the different objects of that reference, whereby it appears that the only matters unreported upon are, the consideration of the diagram to be adopted in the laying out of the ungranted lands of the Crown, and the ascertainment of the Table of Fees. And with respect to the first object the Committee are humbly of opinion that the Diagram marked with the letter (D) is most correspondent to His Majesty's Royal Order, inasmuch as the Reserves for the Crown and Church are therein scattered in as small proportions as the conveniency of settlers will allow, and are as nearly as may be of equal value and of the like quality with the lands to be appropriated; and therefore they humbly submit that the said Diagram be adopted—
>
> "Ordered also that the Clerk of this Board do certify upon the Diagram marked D, mentioned in the said Report, that it is approved of by the Governor in Council; and that he communicate the same to the Surveyor-General. And ordered also that inasmuch as the said Diagram has been made out for a River Township of nine miles broad by twelve miles deep, the Surveyor-General do make out a Diagram upon the same principle for an inland Township of ten miles square."

It is to be noted that there is a notation upon the margin of this Order in Council in the words following:—

> "Respecting the Diagram marked (D) which is to be adopted for the reservations."

It is also to be noted that Diagram "D" mentioned in the above Order in Council was to form the basis of a plan or survey of a river township, and that a river township should be nine miles broad by twelve miles deep. It is also to be noted that the Surveyor-General was to make out a diagram "upon the same principle for an inland township" which was to be ten miles square.

The second of these Orders in Council which was passed on October 30, 1794, approved a report of the Land Committee dated October 25, respecting the diagram ordered to be made out for an inland township. The portion of the report which bears upon the questions involved in this application is as follows:—

> "May it please Your Excellency:
>
> "The Committee humbly report that in obedience to your Lordship's Order of Reference of the 22nd instant indorsed on the said Diagram they have compared the same with that marked D for a River Township approved by your Excellency in Council the 10th instant, and it appears to the Committee that it is conformable in principle to the Diagram approved as aforesaid and humbly recommend the same may be adopted

for laying out the reserves as far as local circumstances will admit but the Committee think it their duty to observe to your Excellency that they find it has been necessary in order to make each lot contain two hundred and ten acres (the allowance of five for every hundred acres for highways—included) to make the township contain ten miles five chains in length and ten miles three chains and fifty-five links in breadth.

"All of which is humbly submitted to your Lordship's great wisdom.

"By order,

"(Signed) THMS. DUNN, *Chairman.*

"Council Chamber,

"Quebec, 25th October, 1794.

"Ordered also that the Clerk of this Board do certify upon this Diagram (to be marked E) that it is approved of by His Excellency the Governor and the Council and that a certified copy thereof and of this minute be transmitted to the Surveyor-General."

It is also to be noted that upon the margin of this Order in Council there is a note in the following words:—

"Respecting a Diagram ordered to be made for an inland township."

Diagram "E" for an inland township was approved in the above Order in Council, but the area of an inland township was increased by the above Order in Council from an area of ten miles square to an area of ten miles five chains in length and ten miles three chains and fifty-five links in breadth.

As stated in the said Order in Council the committee considered that it had been necessary to increase the area of a township "in order to make each lot contain 210 acres (the allowance of five for every hundred acres for highways included)," and it is also to be noted that this is the only mention of an allowance for highways in either of the said Orders in Council.

In further elucidation of the above Orders in Council extracts from the original instructions from His Majesty the King to Lord Dorchester were submitted upon the hearing of the application. These instructions bear date September 15, 1791. Paragraph 34 thereof contains the following language:—

". . . . and for the further encouragement of our subjects it is our will and pleasure that the lands to be granted by you as aforesaid shall be laid out in townships and that each inland township shall as nearly as circumstances shall admit, consist of ten miles square; and such as shall be situated upon a navigable river or water shall have a front of nine miles and be twelve miles in depth, and shall be subdivided in such manner as may be found most advisable for the accommodation of settlers and for making the several reservations for public uses and particularly for the support of the Protestant clergy agreeably to the above recited Act passed in the present year of our reign."

Photostatic copies of plans "D" and "E" referred to in the above Orders in Council, respectively, were submitted in evidence and upon each of these plans the only reservations shown are reservations of certain lots for the Crown and reservations of certain lots for the church. Upon plan "E" there is an endorsement in the words following:—

"Referred to the Land Committee to determine whether the within diagram is conformable to the one approved of by the Governor in Council on 10th instant, for the allocation of the intended reservations on lands belonging to the Crown. By Order of His Excellency Lord Dorchester, Quebec, 22nd October, 1794."

The only endorsement upon plan "D" is in the following words:—

> "I certify that this diagram was approved of by the Governor and Council at a Board of Council held in the Castle of Saint Lewis this 10th day of October, 1794."

In the above Order in Council of October 10, 1794, reference is made to a previous meeting of Council held on January 22, 1794.

The Minute of Council of January 22, 1794, contains a marginal note as follows:—

> "Reference respecting fees, reservations, etc."

At this meeting of Council Lord Dorchester laid before Council an extract from a letter dated October 2, 1793, from the Right Honourable Mr. Dundas respecting the Land Granting Department and mentioning among other things, "a diagram showing the reservations to be made for the use of the clergy and for the future disposition of the Crown." A photostat copy of the letter of Right Honourable Mr. Dundas was also submitted, and it is to be noted that neither in the letter of Mr. Dundas nor in the Minute of Council is any mention made of a reservation for roads. The only reservations mentioned are for the use of the clergy and for the Crown.

In my opinion the letter of instructions issued by His Majesty the King to Lord Dorchester, and the Orders in Council of 10th and 30th October, 1794, respectively, do not constitute a legislative enactment or anything in the nature of such an enactment. These Orders in Council were in the nature of instructions to the Surveyor-General of Lower Canada as to the manner in which surveys should be made of lands which might subsequently be granted by the Crown. These Orders in Council were merely administrative acts of the Governor of Lower Canada which could be revoked, altered or amended at the will of the Governor in Council so long as the lands continued to be the property of the Crown.

The Act commonly known as "The Constitutional Act, 1791," passed by the Parliament of the United Kingdom, constitutes the source of authority in reference to the land of the Crown in Canada as it existed at that date. By section 42 of this Act the Legislative Councils of both Upper and Lower Canada were empowered to legislate in reference to Crown lands but only as provided in the said section. Between the years 1791 and 1855 a great many Acts and Ordinances were passed by the proper legislative authority dealing with the subject of roads and highways in Lower Canada. All of these Acts were apparently consolidated or repealed by the Municipal Road Act, chapter 100 of the Statutes of Canada passed in the year 1855. However, it is provided by section 1, subsection III of this Act, that it shall not apply to roads under the control of the Commissioner of Public Works of Lower Canada unless and until the same shall be relinquished to municipal authorities. The Road Act of 1855 had, therefore, no application to the lands involved in this application, as the township of Baby was not constituted as a municipality until July 15, 1905.

The Municipal Code of the province of Quebec contains many provisions respecting highways. Counsel for the municipality cited sections 606, 791 and other sections as applicable to the present case. I do not consider that the provisions of these sections have any bearing upon the present case, nor do I consider that sections 20 and 22 of the Code in respect of railway companies have any application to a railway incorporated by an Act of the Parliament of Canada.

Upon the above statement of facts counsel for the municipality argued that a reservation for highways was in fact provided in the plan of survey of both river and inland townships; that while plan "D" was approved for

river townships, the Order in Council of October 10, 1794, expressly ordered that a diagram for an inland township should be made "upon the same principle." Counsel for the municipality also argued that the language contained in paragraph 34 of Lord Dorchester's instructions that both river and inland townships should be subdivided "in such manner as may be found most advantageous for the accommodation of settlers and for making the several reservations for public uses," etc., would necessarily include reservations for highways, and that potential highways existed in these Crown lands as soon as surveys of them had been made. In my opinion the matter is by no means free from doubt, more particularly because the Order in Council of October 10, 1794, makes no reservation for highways, but makes express reservations "for the Crown and church scattered in as small proportions as the conveniency of settlers will allow." Upon this point counsel for the railway company contend that the evidence has established that the township of Baby is a river township and that no reservation for roads has ever been made in respect of it. But counsel for the railway company also contend that no matter what interpretation may be placed upon these Orders in Council in respect of reservations for highways that the Orders in Council were not more than administrative acts of the Governor in Council, which can have no legal effect upon subsequent grants from the Crown where no reservation has been expressed in the grant.

Under these circumstances it may not be necessary upon this application to decide the question of whether there is a distinction between surveys of river and inland townships under these two Orders in Council. Whatever the legal result may be, it seems clear from the evidence that the practice since 1794 has been to provide for highway reservations in the surveys of both inland and river townships (see exhibits 10, 11, 12 and 13). It appears also that Crown grants to settlers are made nominally for an area of 100 acres for each lot, but in reality the parcel granted contains 105 acres. In general these grants do not contain any specific reservation for highways, although in some instances reservations have been made. Evidently the practice in this respect has not been uniform.

The existence of an actual roadway at the point of the railway crossing in the township of Baby as of October, 1933, when this application was made, was admitted by counsel for the railway company. It also appears that the Crown made grants of land to settlers in the area which now comprises the said township as early as the year 1908.

Counsel for the municipality cited the case of Canadian Pacific Railway Company vs. Ontario Department of Public Works, 24 C.R.C., p. 231, and 58 S.C.R., p. 189, in support of his contention that the above Orders in Council of 10th and 30th October, 1794, respectively, had the force and effect of statutory enactments and had established potential highways in respect of Crown lands in the province of Quebec to the same extent as had been done by Order in Council of August 6, 1866, in the province of Ontario. It must be noted that in the Ontario case the Order in Council of August 6, 1866, applying to portions of the province of Ontario, was passed pursuant to the provisions of chapter 22, section 7, of the Consolidated Statutes of Canada, 1859, which statute did not apply to Orders in Council passed prior to its enactment, and also that the conveyance which was made by Order in Council of the province of Ontario was expressly made subject to a reservation for highways in accordance with the provisions of a provincial statute. I am not aware of any statutory authority for the Orders in Council of 1794, which would authorize a reservation for highways in the surveys of Crown lands. The Constitutional Act of 1791 makes no provision for a reservation for highways in the survey

of Crown lands. The only suggestion which has been made which might possibly justify such a reservation is that it may be inferred from the following words contained in the Royal instructions issued to Lord Dorchester:—

> "and shall be subdivided in such manner as may be found most advisable for the accommodation of settlers and for making the several reservations for public uses and particularly for the support of the Protestant clergy agreeable to the above recited Act passed in the present year of our reign."

My view is that these Orders in Council must be regarded as administrative rather than as legislative acts of the Council. They were departmental directions, or orders, as to the method to be adopted in making surveys of Crown lands. They did not constitute "potential" highways as was decided in the Ontario case above referred to. The power to make grants either with or without reservations, as it might deem proper, always remained in the Crown. The Crown was dealing with its own land in regard to which neither the public nor third parties had obtained any rights whatever. In my opinion an easement or servitude could not be created upon or over lands of the Crown, as contended by counsel for the municipality, without an express grant under the seal of the province as provided in Lord Dorchester's instructions in the following words:—

> "And we do likewise give and grant you full power and authority with the advice of our executive Council for the affairs of our said provinces of Upper and Lower Canada, to grant lands within the said provinces respectively, which said grants are to pass and be sealed with our seal of such province."
>
> (Canadian Archives, 1791-1818, Arthur G. Doughty and Duncan A. MacArthur, at p. 11.)

It is contended on behalf of the railway company, in the first place, that no reservation for highways ever existed in respect of lands in the township of Baby, which is a river township and, in the second place, that if any such reservation was in fact intended in a river township, the Order in Council under which it was created was in the nature of an administrative act in respect of surveys which did not create any easement or servitude in or upon the lands in question, and that the Crown retained the right to grant these lands free from any easement, charge or encumbrance as it might thereafter see fit. In this respect the railway company supports its contention by production of the grant from the Crown to the railway company dated July 12, 1933, and relies upon the express covenants, provisions and conditions contained in the grant. The conveyance expressly states that the grant of the land is to be "as the whole now is with all the rights, members and appurtenances thereunto belonging, save and except the reservations hereinafter mentioned." A further clause in the conveyance is as follows:—

> "By virtue of these presents the railway company shall be the absolute owner of the properties."

The grant contains two reservations. Firstly, a reservation in respect of mineral lands and, secondly, the Crown reserves the right to retake lands bordering on the shores of lakes and rivers for road allowances. Each of these reservations was inserted in the grant pursuant to the provisions of statutes of the province of Quebec. But the grant to the railway company contains no reservation whatever in respect of highways under the Orders in Council of 1794.

Since 1794 the Crown retained in itself the whole title in the ungranted lands and, as sole owner and proprietor of such lands, the Crown had the right to make grants either with or without reservations in respect of highways as it

might deem proper. The Crown was not irrevocably bound by the terms of the Orders in Council of 1794. It could vary or rescind them at any time. The grant to the railway company in the year 1933 operated as a rescission of any provisions of the Orders in Council of 1794 for road allowances, in so far as the lands granted to the railway company are concerned.

For the reasons set out above, I am of opinion that the lands of the railway company in the township of Baby are not subject to any easement or servitude in respect of highway reservations under the Orders in Council of 1794. The highway involved in this application was not a highway, either potential or otherwise, when the railway company obtained its right of way from the province, by Order in Council approved 12th February, 1923.

The conclusions which I have come to upon the facts and circumstances above set out may be summarized as follows:—

1. The Orders in Council of 1794 did not constitute a valid reservation for highways as against subsequent grantees of the Crown. C.P.R. vs. Ontario Department of Lands and Forests, 27 C.R.C. 393 at p. 399, and S.C.R. (1923) p. 155 at p. 165.

2. The grant from the Crown to the railway company in 1933 is sufficient in itself to rebut any presumption in favour of such a reservation which might otherwise arise either from the terms of the above Orders in Council, or by reason of the practice which has been followed for many years in the survey of Crown lands in the province of Quebec.

3. That the railway company occupies a position of seniority in respect of the railway crossing which is the subject of this application.

4. That the cost of constructing and maintaining the crossing should be borne by the applicant municipality.

In arriving at these conclusions, I have not overlooked the decision of this Board, and particularly the judgment of the Deputy Chief Commissioner, in which two members of the Board concurred, upon the recent application in the case of Mistassini vs. C.N.R. reported in 43 C.R.C. 84. With great respect I am unable to agree with the opinion expressed by the Deputy Chief Commissioner in the above case as to the effect of the Order in Council of October 30, 1794, nor am I in agreement with the views which he expressed in regard to sections 20 and 22 of the Municipal Code of Quebec. These sections have no application to a railway company incorporated by an Act of the Parliament of Canada, except in regard to the matter of drainage as provided by section 270 of the Railway Act.

I am aware that the questions which I have endeavoured to deal with in this judgment are to a large extent questions of law. There is little, if any, dispute in regard to the facts of the case. It has also been represented by counsel for both the Canadian Pacific Railway Company and the Canadian National Railways that the legal questions arising in this application are likely to arise in the future in many cases in respect of railway crossings throughout the northern portions of the provinces of Quebec and Ontario. It becomes important, therefore, that a final determination of the legal questions involved should be obtained from the Supreme Court of Canada, so that the matter may be definitely settled for the future. In my opinion the Board should state a case in writing for the opinion of the Supreme Court of Canada, pursuant to the provisions of section 43 of the Railway Act.

April 6, 1936.

McLean, Assistant Chief Commissioner:

The construction of the Orders in Council concerned involves questions of law or of jurisdiction. I am of the opinion of the Chief Commissioner as expressed in reasons for his judgment, dated April 6, 1936, that it is important there should be a final determination by the Supreme Court of Canada of the legal questions involved.

I agree with the Chief Commissioner in his opinion that the Board should state a case in writing for the opinion of the Supreme Court of Canada, pursuant to the provisions of section 43 of the Railway Act.

April 8, 1936.

Garceau, Deputy Chief Commissioner:

This is an appeal from the Order of the Board authorizing the construction of a highway across the Appellants' railway in the township of Baby, Quebec, and directing that the expenses of construction and maintenance of the crossing should be borne by appellants. The reasons for the appeal are:—

(*a*) The Orders in Council of the 10th and 30th of October, 1794, were not legislative enactments.

(*b*) If they were, the Order in Council of the 10th of October, 1794, concerns river townships, and the Township of Baby is a river township. In this Order there is no mention of any allowance for highways.

(*c*) If these Orders together with the Royal Instructions are to be be considered as legislative enactments, the title deed by the Crown to the railways cancels any easement.

The reasons why these Orders in Council should be considered as legislative enactments are to be found in the judgment rendered by the Board; in the submissions of the attorney of the C.P.R., Mr. Flintoft, August 29, 1934, page 2:—

> "In so far as they have been organized since 1867, townships in this province are no longer governed by the Order in Council of 1794, but by provincial Acts . . ."

Page 3:

> "As the Order in Council of 1794 has, in effect, been repealed, having been replaced and superseded by the provincial Acts since Confederation, the reservation for road allowance in that Order cannot establish any senior rights at highway crossings in territories organized into townships since Confederation."

The township of Baby being a river township, the area of such townships having been established by Order in Council of October 10, 1794, in which there is no mention of reservation for highways, is nevertheless under the authority of the Royal Instructions given to Lord Dorchester subject to an easement in favour of highways.

The Order in Council of October 30, 1794, does not create the allowance in favour of highways but only mentions the existence of such allowance; the wording of both Orders shows that they fixed the area of the townships and of each lot. The Royal Instructions created townships, easement in favour of highways and reserves for the clergy, the extent of which was to be determined by the instructions given by the Governor in Council to the surveyors.

The existence of such easement on all wild land is mentioned in the Royal Instructions. The exhibit filed by the municipality shows that in 1802, the surveyor was instructed to subdivide the township of "Onslow," a river township, into lots of 200 acres plus the 5 per cent allowance. The Order in Council of 1866 passed by the Government having jurisdiction over both Canadas says:—

"It is necessary to make provision for the establishment of roads; in the meantime, he, the Commissioner, therefore commands that an allowance of 5 per cent of the acreage of land be reserved for roads, as is done in Lower Canada. . ."

(The townships to be created were on the north shore of lakes Huron and Superior: river townships.)

It is demonstrated that the easement in favour of highways existed in Quebec prior to 1867 on river and inland townships. There is no evidence that these dispositions were ever repealed.

The Municipal Code of Quebec, promulgated the second day of November, 1871, applies to all territory of the province of Quebec, save any derogation contained in a special charter granted by the Legislature to any municipality (section 1).

This is admitted by Mr. Flintoft in his submissions of August 29:—

"In so far as they have been organized, townships are no longer governed by the Order in Council of 1794 but by provincial Acts." (The township of Baby was organized in 1895.)

The Municipal Code is a provincial Act, section 791 of which says:—

"No indemnity may be allowed for the land required for the first road upon a lot, nor for the land reserved for a public road in the grant or concession of a lot."

This section creates another easement in favour of highways and confirms those mentioned in the grant or concession of the lot. It cannot be read otherwise, as explained by the attorney for the municipality. We must note that this easement is on any part of the lot.

Section 606, M.C.Q., says:—

"If a lot is owned or occupied in portions by two or more persons, such owner, or occupants are jointly and severally liable for the work to be done on the whole of the front road of such lot, even in the case when the part of the lot owned or occupied by them does not border upon the road, saving their recourse against each other in proportion to the value of the land occupied by each."

The judgment quoted sections 20 and 22 which are legislative enactments within the exclusive jurisdiction of the province.

The British North America Act has conferred to the provinces the exclusive authority to legislate on property, civil rights, municipal institutions, etc.

The township of Baby was created in 1895 and part of it is within the limits of the corporation of St. Eugene de Guigues. This municipality was incorporated before the railway had acquired any rights.

Every private property unless relieved by special statute is subject to the dispositions of the Municipal Code.

These dispositions of the Municipal Code do not conflict with section 256 of the Railway Act which confers to the Board of Railway Commissioners the absolute authority to decide whether or not a highway crossing should be built, etc.

I would dismiss the application, maintain the order, but the wording of the Orders in Council and of the dispositions of the Quebec Municipal Code involves questions of law or of jurisdiction and I concur in the opinion of the Chief Commissioner and the Assistant Chief Commissioner that it is important there should be a final determination by the Supreme Court of Canada of the legal questions involved.

I agree with their opinion that the Board should state a case in writing for the opinion of the Supreme Court of Canada, pursuant to the provisions of section 43 of the Railway Act.

April 8, 1936.

(Traduction)

Requête de la compagnie du chemin de fer Canadien du Pacifique demandant, en vertu de l'article 51 de la Loi des chemins de fer, de reconsidérer la décision rendue dans l'affaire du passage de voie publique situé à environ 300 pieds au sud des cours du chemin de fer, à Angliers, P.Q., et de rendre une ordonnance révoquant l'ordonnance N° 51463 du 25 octobre 1934 qui met à la charge de la compagnie requérante le coût de construction et d'entretien dudit passage.

(Dossier N° 38839)

JUGEMENT

GUTHRIE, Commissaire en chef:—

Le 13 octobre 1933, la municipalité de St-Eugène de Guigues fit une demande pour obtenir un passage de chemin public à travers les voies de la compagnie du chemin de fer Canadien du Pacifique, à Angliers, province de Québec, situé dans le canton de Baby.

Le 5 mars 1934, la Commission autorisa la construction de ce passage et dans son ordonnance N° 50814 réserva sa décision quant à la répartition des frais de construction et d'entretien. Subséquemment, par l'ordonnance N° 51463 rendue le 25 octobre 1934, il fut décidé que le coût de construction et les frais d'entretien dudit passage fussent à la charge de la compagnie du chemin de fer Canadien du Pacifique.

Le 17 décembre 1934, la compagnie du chemin de fer Canadien du Pacifique fit, en vertu de l'article 51 de la Loi des chemins de fer, une demande pour une nouvelle audition de la requête en raison de la découverte de nouvelle preuve, et le 23 janvier 1935, la compagnie du chemin de fer soumit un factum de la nouvelle preuve qu'elle entendait présenter devant la Commission si sa requête pour une nouvelle audition lui était accordée. La compagnie du chemin de fer laissa aussi entendre que les questions que comportait cette affaire se présenteraient probablement à l'avenir dans bien des requêtes par tout le Canada, et que dans le cas où la Commission rendrait une décision à l'encontre des prétentions de la compagnie du chemin de fer, celle-ci aimerait qu'on lui permette d'en appeler à la Cour Suprême du Canada pour que les questions en litige puissent être définitivement déterminées. L'avocat de la compagnie du chemin de fer allégua aussi qu'il était essentiel, pour bien considérer la cause, que la nouvelle preuve qu'il entendait présenter devrait être soumise à la Commission, et, pour le cas où il y aurait appel, à la Cour Suprême du Canada.

Le 22 août 1935, la Commission déclara qu'elle était prête à accorder une nouvelle audition de la requête pour considérer la preuve additionnelle que la compagnie désirait soumettre, après quoi la cause pourrait être plaidée de nouveau par les parties intéressées. Après avis dûment envoyé à toutes les parties intéressées, la requête fut de nouveau entendue dans la Cité de Québec le 5 février 1936, en présence des avocats de toutes les parties.

La nouvelle preuve produite par la compagnie du chemin de fer lors de l'audition consistait en les pièces suivantes:—

1. Copies certifiées des arrêtés en conseil de Lord Dorchester, en date des 10 et 30 octobre 1794;
2. Copie du transport par la Couronne à la compagnie Interprovincial and James Bay Railway de l'emprise à l'endroit en question, en date du 12 juin 1933;

3. Mappe publiée par le ministère de l'Intérieur des sections d'Ontario et de Québec, y compris le canton de Baby, et montrant ses limites par rapport au Lac des Quinze;

4. Mappe cadastrale d'une partie du Canton de Baby.

5. Proclamation émise par le Lieutenant Gouverneur de la province de Québec, en date du 10 juin 1895, créant le Canton de Baby.

Des témoins ont aussi été appelés par la compagnie du chemin de fer pour établir le fait que les eaux tant du Lac des Quinze que de la Rivière des Quinze étaient navigables. Ce point ne fut pas sérieusement contesté à l'audition par l'avocat de la municipalité.

On a soumis aussi une nouvelle preuve au nom de la municipalité pour indiquer la pratique qui avait été établie dans la province de Québec au sujet des arpentages et aussi au sujet des concessions des terres de la Couronne relativement aux allocations ou réserves pour les chemins.

Le Canton de Baby où se trouve le passage en question fut érigé en corporation municipale le 15 juillet 1895, mais les terres comprises dans ledit Canton sont restées la propriété de la Couronne, sauf quelques lots qui avaient été jusque-là concédés par la Couronne, et le titre allodial aux terres impliquées dans la présente requête continua d'être en possession de la Couronne jusqu'à son transfert à la compagnie du chemin de fer le 12 juin 1933. On remarquera que la mappe cadastrale du Canton de Baby pour l'année 1928 n'indique aucune réserve pour des chemins.

La compagnie Interprovincial and James Bay Railway fut incorporée en vertu du Chap. 66 des Statuts du Canada de 1901, avec pouvoir de construire et d'exploiter une ligne de chemin de fer à partir d'un endroit à ou près de Lumsden's Mill sur la ligne du chemin de fer Canadien du Pacifique jusqu'à la Rivière des Quinze. Le chemin de fer Interprovincial and James Bay devint par la suite une partie du réseau du Pacifique-Canadien.

L'acte de concession faite par la Couronne à la compagnie Interprovincial and James Bay Railway, en date du 12 juin 1933, fut autorisé par un arrêté en conseil daté du 3 avril 1933, lequel stipule que la compagnie du chemin de fer obtenait un droit de passage à travers les terres de la Couronne pour sa ligne de chemin de fer en conformité de la Loi des chemins de fer de la province de Québec en vertu de certains arrêtés en conseil qui sont annexés à l'acte; que la compagnie du chemin de fer acquérait un droit absolu de propriété sur les terres de la Couronne actuellement occupées par sa ligne de chemin de fer, et que le ministre des Terres et Forêts de la province de Québec avait été dûment autorisé par arrêté en conseil de passer un acte de transport en faveur de la compagnie du chemin de fer des droits de propriété sur les terres mentionnées dans ledit acte. Cet acte de transport ne contient aucune clause ou disposition concernant les chemins ou de réserve de chemin. L'acte de concession fait des réserves spécifiques concernant les terrains miniers et les terres situées sur le bord des lacs et des rivières, tel que mentionné dans ledit acte de transport.

La question en litige dans la présente requête, en résumé, est de savoir si c'est la compagnie requérante ou la municipalité qui possède le droit d'ancienneté par rapport au passage en question, et pour déterminer ce point, il est nécessaire d'examiner les deux arrêtés en conseil passés en 1794, à une époque où Lord Dorchester était gouverneur en chef de la province du Bas-Canada, etc., etc. Le premier de ces arrêtés en conseil porte la date du 10 octobre 1794. Il pourvoit à ce qu'un certain rapport d'un Comité du Conseil plénier daté le 2 octobre 1794 soit approuvé et enregistré. Ce rapport est inséré en entier dans ledit arrêté en conseil, mais la partie d'icelui qui se rapporte à la question impliquée dans la présente requête se lit comme suit:—

"Rapport d'un Comité du Conseil plénier se composant de l'honorable William Osgoode, François Baby et Thomas Dunn, Ecuiers, sur l'Ordre de Référence de Votre Seigneurie en date du 19 écoulé, se rapportant à l'Ordre du 22 janvier dernier concernant le diagramme et autres questions (sur lesquelles il n'y a pas eu de rapport) y mentionnés.

"Qu'il plaise à Votre Excellence:—

"Conformément à l'arrêté en conseil de Votre Seigneurie en date du 19 écoulé, le Comité a procédé à lire l'Ordre de Référence original du 22 janvier 1794; et aussi les divers rapports qui ont été faits depuis de temps à autre sur les différents objets de cette référence en vertu desquels il appert que les seules questions sur lesquelles il n'a pas été fait de rapport, sont: la prise en considération du Diagramme à être adopté relativement au tracé des terres de la Couronne non concédées et l'échelle des honoraires. Et pour ce qui est du premier objet, le Comité est humblement d'avis que le Diagramme marqué de la lettre (D) correspond le plus à L'Ordre Royal de Sa Majesté attendu que les réserves pour la Couronne et l'Eglise y sont dispersées en aussi petites proportions que la commodité des colons le permettra et sont autant que possible de valeur égale et de même qualité que les terrains à être appropriés; et c'est pourquoi il soumet humblement que ledit Diagramme soit adopté.

"Il est aussi ordonné que le Greffier de ce Comité certifie sur le Diagramme marqué D mentionné dans ledit rapport, qu'il est approuvé par le Gouverneur en son conseil et qu'il en transmette une copie à l'Arpenteur Général. Et il est aussi ordonné que vue que ledit Diagramme a été préparé pour un canton riverain de neuf milles de largeur par douze milles de profondeur, l'arpenteur général prépare un Diagramme sur le même principe pour un Canton intérieur de dix milles carrés."

On remarquera qu'il y a une note dans la marge de cet arrêté en conseil conçue en ces termes:—

"Concernant le Diagramme marqué (D) qui devra être adopté pour les réserves."

On remarquera aussi que le Diagramme "D" mentionné dans l'arrêté en conseil précité devait constituer la base d'un plan ou arpentage d'un canton riverain, et qu'un canton riverain devrait avoir neuf milles de largeur par douze de profondeur. On doit aussi noter que l'Arpenteur Général devait préparer un diagramme sur "le même principe pour un canton intérieur" qui devait être de dix milles carrés.

Le deuxième de ces arrêtés en conseil qui fut passé le 30 octobre 1794 approuvait un rapport du Comité des Terres en date du 25 octobre concernant le diagramme qu'on avait ordonné de préparer pour un canton intérieur. La partie du rapport portant sur les questions impliquées dans la présente requête se lit comme suit:—

"Qu'il plaise à Votre Excellence:—

"Le Comité humblement fait rapport que, conformément à l'ordre de référence de Votre Seigneurie en date du 22 courant, inscrit sur l'endos dudit diagramme, il a comparé ledit diagramme avec celui marqué D pour un Canton riverain approuvé par Votre Excellence en son conseil le 10 du courant, et il appert à ce Comité que ce diagramme est conforme en principe à celui qui a été approuvé comme susdit, et ce Comité recommande humblement qu'il peut être adopté pour le tracé des réserves autant que le permettront les circonstances locales; mais le Comité croit de son devoir

de faire observer à Votre Excellence qu'il constate qu'il a été jugé nécessaire pour que chaque lot renferme deux cent dix acres de terre (l'allocation de cinq acres pour chaque cent acres pour les chemins—comprise) de donner au Canton une superficie de dix milles cinq chaînes de longueur et dix milles trois chaînes et cinquante-cinq chaînons de largeur.

"Le tout humblement soumis à la grande sagesse de Votre Seigneurie.

"Par ordre

(Signé) THMS. DUNN, *président.*

"Chambre du Conseil,
"Québec, le 25 octobre 1794.

"Il est aussi ordonné que le Greffier de ce Comité certifie sur ce diagramme (à être marqué E) qu'il est approuvé par Son Excellence le Gouverneur en son conseil et que copie certifiée d'icelui et des minutes soient transmises à l'Arpenteur Général."

On notera aussi que dans la marge de cet arrêté en conseil on y lit les mots suivants:

"Relativement à un diagramme qu'on a ordonné de préparer pour un canton intérieur."

Le Diagramme "E" pour un canton intérieur fut approuvé par l'arrêté en conseil précité, mais la superficie d'un canton intérieur fut changée par ledit arrêté en conseil d'une superficie de dix milles carrés en une superficie de dix milles cinq chaînes en longueur et de dix milles trois chaînes et cinquante-cinq chaînons en largeur.

Tel que stipulé dans l'arrêté en conseil, le Comité a considéré qu'il était devenu nécessaire d'augmenter la superficie d'un canton "pour donner à chaque lot 210 acres (l'allocation de cinq acres pour chaque cent acres pour chemins—comprise)" et on remarquera aussi que ceci est la seule mention d'une allocation pour chemins dans l'un ou l'autre desdits arrêtés en conseil.

Pour éclaircir davantage les arrêtés en conseil ci-dessus on a soumis, lors de l'audition de la requête, des extraits des premières instructions de Sa Majesté le Roi à Lord Dorchester. Ces instructions portent la date du 15 septembre 1791. Le paragraphe 34 de ces instructions se lit comme suit:

".....et pour donner plus d'encouragement à nos sujets, c'est notre volonté et notre plaisir que les terres qui seront concédées par vous comme susdit doivent être tracées en cantons, et que chaque canton intérieur doive, autant que les circonstances le permettent, consister en une superficie de dix milles carrés; et que ceux qui seront situés sur une rivière navigable ou non navigable doivent avoir neuf milles de front et douze milles de profondeur, et doivent être subdivisés de la manière qu'on considèrera le plus avantageux pour la commodité des colons et pour l'établissement des diverses réserves pour l'usage du public et particulièrement pour le soutien du Clergé protestant conformément à la loi précitée passée dans la présente année de notre règne."

Des copies photographiées des plans "D" et "E" mentionnés dans les arrêtés en conseil ci-dessus, furent soumises comme preuve, et sur chacun de ces plans, les seules réserves qui apparaissent sont des réserves de certains lots pour la Couronne et celles de certains lots pour l'Eglise. Sur le plan "E" on lit sur l'endos les mots suivants:—

"Référé au Comité des Terres pour déterminer si le présent diagramme est conforme à celui qui a été approuvé par le Gouverneur en son conseil le 10 du courant pour l'allocation des réserves qu'on a en vue sur les terres appartenant à la Couronne. Par Ordre de Son Excellence Lord Dorchester, Québec, le 22 octobre 1794."

La seule inscription sur l'endos du plan "D" comporte les mots suivants:—

"Je certifie que ce diagramme a reçu l'approbation du Gouverneur et du Conseil à une assemblée du Conseil tenue dans le Château St-Louis ce dixième jour d'octobre 1794."

Dans l'arrêté en conseil du 10 octobre 1794, il est fait allusion à une réunion précédente du Conseil tenue le 22 janvier 1794.

Les minutes de la réunion du Conseil du 22 janvier 1794 contiennent en marge la note suivante:—

"Mention au sujet des honoraires, des réserves, etc."

A cette réunion du Conseil, Lord Dorchester soumit un extrait d'une lettre du Très Honorable M. Dundas, en date du 2 octobre 1793, concernant le ministère des Concessions de Terres, et mentionnant entre autres choses, "un diagramme montrant les réserves à être faites pour l'usage du Clergé et pour toute disposition future de la Couronne." Une copie photographiée de la lettre du Très Honorable M. Dundas fut aussi soumise, et on notera que ni dans la lettre de M. Dundas ni dans les minutes du Conseil il n'est fait mention d'une réserve pour les chemins. Les seules réserves qui y sont mentionnées sont pour l'usage du Clergé et pour la Couronne.

A mon avis, la lettre d'instructions adressée par Sa Majesté le Roi à Lord Dorchester, et les arrêtés en conseil du 10 et du 30 octobre 1794, ne constituent pas des actes législatifs ou toute autre chose de la nature de tels actes. Ces arrêtés en conseil constituaient des instructions adressées à l'Arpenteur Général du Bas Canada relativement à la manière dont devaient être faits les arpentages des terres qui pourraient par la suite être concédées par la Couronne. Ces arrêtés en conseil étaient purement des mesures administratives du Gouverneur du Bas Canada, lesquelles pouvaient être révoquées, modifiées ou amendées au bon vouloir du Gouverneur en son conseil aussi longtemps que les terres continuaient à appartenir à la Couronne.

L'acte communément connu sous le nom de " L'Acte Constitutionnel de 1791 " adopté par le Parlement du Royaume-Uni, constitue la source d'autorité concernant les terres de la Couronne en Canada, telles qu'elles existaient à cette date. En vertu de l'article 42 de cet Acte, les Conseils Législatifs du Haut et du Bas Canada avaient le pouvoir de légiférer en ce qui concernait les terres de la Couronne mais seulement d'après les termes dudit article. Entre les années de 1791 et 1855, un grand nombre d'acte et d'ordonnances furent adoptés par l'autorité législative compétente traitant de la question des chemins et des routes dans le Bas Canada. Tous ces actes furent apparemment consolidés ou abrogés par la Loi des municipalités et des chemins, Chap. 100 des Statuts du Canada, passée en 1855. Cependant l'article 1, paragraphe 3 de cette Loi stipule qu'elle ne s'appliquera pas aux chemins sous le contrôle du Commissaire des Travaux Publics du Bas Canada jusqu'à ce qu'ils soient transférés aux autorités municipales. La loi des chemins de 1855 ne s'appliquait pas par conséquent aux terres impliquées dans la présente requête vu que le Canton de Baby ne fût pas érigé en municipalité avant le 15 juillet 1905.

Le Code Municipal de la Province de Québec renferme plusieurs dispositions concernant les chemins. L'avocat de la municipalité a cité les articles 606, 791 et autres comme s'appliquant au présent cas. Je ne considère pas que les dispositions de ces articles ont une portée dans la présente cause, non plus que je considère que les articles 20 et 22 du Code par rapport aux compagnies de chemin de fer s'appliquent à un chemin de fer incorporé en vertu d'une loi du Parlement du Canada.

Sur l'état des faits ci-dessus l'avocat de la municipalité a prétendu qu'on avait en fait pourvu à une réserve pour des chemins dans le plan d'arpentage des cantons riverains et intérieurs; que bien qu'on avait approuvé le plan D pour les cantons riverains, l'arrêté en conseil du 10 octobre 1794 ordonnait expressément

qu'un diagramme pour un canton intérieur devait être préparé " sur le même principe ". L'avocat de la municipalité prétendit aussi que les termes contenus dans le paragraphe 34 des instructions de Lord Dorchester à l'effet que les cantons riverains et intérieurs devaient être subdivisés " de la manière qu'on considérera le plus avantageux pour la commodité des colons et pour l'établissement des diverses réserves pour l'usage du public ", etc., comprendraient nécessairement des réserves pour les chemins et qu'on pourvoyait à l'existence de futurs chemins sur les terres de la Couronne aussitôt qu'on en avait fait l'arpentage. A mon avis l'affaire comporte tout à fait un doute, plus particulièrement parce que l'arrêté en conseil du 10 octobre 1794 ne fait aucune réserve pour les chemins, mais fait des réserves expresses " pour la Couronne et l'Eglise qui sont dispersées en aussi petites proportions que la commodité des colons le permettra ". Sur ce point, l'avocat de la compagnie du chemin de fer prétend que la preuve a établi que le Canton de Baby est un canton riverain et qu'aucune réserve pour des chemins n'a jamais été faite à son sujet. Mais l'avocat de la compagnie du chemin de fer prétend aussi que quelle que soit l'interprétation qu'on puisse donner à ces arrêtés en conseil par rapport aux réserves pour des chemins, ces arrêtés en conseil n'étaient pas autre chose que des actes administratifs du Gouverneur en son conseil, lesquels ne peuvent avoir aucun effet légal sur les concessions subséquentes de la Couronne dans lesquelles aucune réserve n'a été faite.

Dans les circonstances, il peut ne pas être nécessaire dans cette requête de décider la question de savoir s'il existe une distinction entre les arpentages des cantons riverains et intérieurs en vertu de ces deux arrêtés en conseil. Quel que soit le résultat légal, il semble évident de la preuve que la pratique a été depuis 1794 de pourvoir à des réserves de chemin dans les arpentages qui ont été faits tant des cantons intérieurs que riverains (voir les exhibits 10, 11, 12 et 13). Il semble aussi que les concessions faites par la Couronne aux colons comprennent nominalement une superficie de 100 acres pour chaque lot, mais en réalité le morceau de terrain concédé comprend 105 acres. En général ces concessions ne renferment aucune réserve spécifique pour des chemins bien que dans certains cas il y eut de telles réserves. Evidemment, la pratique suivie à ce sujet n'a pas été uniforme.

L'existence d'un chemin à l'endroit du passage du chemin de fer dans le Canton de Baby, à la date du mois d'octobre de 1933, lorsque la présente requête fut présentée, a été admise par l'avocat de la compagnie du chemin de fer. Il appert aussi que la Couronne concéda des terres aux colons dans le territoire que comprend maintenant ledit canton dès l'année 1908.

L'avocat de la municipalité a cité la cause de la compagnie du chemin de fer Canadien du Pacifique vs le ministère des Travaux Publics d'Ontario, rapportée à 24 C.R.C. p. 231, et à 58 S.C.R. p. 189, à l'appui de sa prétention, que les arrêtés en conseil du 10 et du 30 octobre 1794 précités, avaient la force et l'effet de loi statutaire et avaient établi des chemins à être construits plus tard par rapport aux terres de la Couronne dans la province de Québec comme dans le cas de l'arrêté en conseil du 6 août 1866 concernant la province d'Ontario. On doit noter que dans le cas de la cause d'Ontario, l'arrêté en conseil du 6 août 1866, s'appliquant à des sections de la province d'Ontario, fut passé par suite des dispositions du Chapitre 22, article 7, des Statuts Consolidés du Canada de 1859, lequel statut ne s'appliquait pas aux arrêtés en conseil passés avant son adoption, et aussi que le transport qui fut fait par un arrêté en conseil de la province d'Ontario l'avait été expressément sujet à une réserve pour des chemins en conformité des dispositions d'une loi provinciale. Je ne connais pas d'autorité statutaire pour les arrêtés en conseil de 1794 qui autoriserait une réserve pour les chemins dans les arpentages des terres de la Couronne. L'Acte Constitutionnel de 1791 ne contient pas de disposition pour une réserve de chemin dans l'arpentage des terres de la Couronne. La seule suggestion qui a été faite et qui pourrait peut-être justifier une telle réserve, est celle qu'on pourrait déduire des termes suivants contenus dans les instructions royales adressées à Lord Dorchester: —

" et doivent être subdivisés de la manière qu'on considérera le plus avantageux pour la commodité des colons et pour l'établissement des diverses réserves pour l'usage du public et particulièrement pour le soutien du Clergé protestant conformément à la loi précitée passée dans la présente année de notre règne."

Je suis d'opinion que ces arrêtés en conseil doivent être considérés comme des actes administratifs plutôt que comme des mesures législatives du Conseil. Ils constituaient des instructions ou ordres de département quant à la méthode à suivre pour faire les arpentages des terres de la Couronne. Ils n'établissaient pas des chemins " en puissance " tel qu'il avait été décidé dans la cause d'Ontario mentionnée ci-dessus. Le pouvoir de faire des concessions, soit avec ou sans réserves, selon qu'elle le pouvait juger convenable, a toujours appartenu à la Couronne. La Couronne voyait à ses propres terres au sujet desquelles ni le public ni des tierces parties n'avaient obtenu aucun droit quelconque. A mon avis, un privilège ou une servitude ne pouvait être créé sur les terres de la Couronne, comme l'a prétendu l'avocat de la municipalité, sans une concession expresse faite sous le sceau de la Province tel que prévu dans les instructions de Lord Dorchester dans les termes suivants: —

" Et nous vous donnons et accordons pareillement le plein pouvoir et la pleine autorité avec l'avis de notre Conseil Exécutif pour les affaires de nosdites provinces du Haut et du Bas Canada, de concéder des terres situées dans les limites desdites provinces respectivement, lesquelles dites concessions doivent être faites et porter notre sceau pour ladite province."

(Archives du Canada, 1791-1818, Arthur G. Doughty et Duncan A. MacArthur, à la page 11).

On a prétendu au nom de la compagnie du chemin de fer qu'en premier lieu aucune réserve pour des chemins n'avait jamais existé concernant les terres du Canton de Baby qui est un canton riverain, et, en second lieu, que si on avait eu de fait l'intention de faire certaines réserves dans un canton riverain, l'arrêté en conseil en vertu duquel il était créé était de la nature d'un acte administratif par rapport aux arpentages qui ne créaient pas de privilège ou de servitude dans ou sur les terres en question, et que la Couronne retenait le droit de concéder ces terres exemptes de tout privilège, charge ou servitude selon qu'elle le jugerait à propos par la suite. Sous ce rapport, la compagnie du chemin de fer appuie sa prétention par la production de la concession faite par la Couronne à la compagnie du chemin de fer le 12 juillet 1933, et s'en rapporte aux conventions, dispositions et conditions expresses contenues dans l'acte de concession. L'acte de transport déclare explicitement que la concession de terrains doit être " comme le tout est actuellement avec tous les droits, les parties et les accessoires en faisant partie, sauf et à l'exception des réserves ci-après mentionnées." Une autre clause que renferme l'acte de transport se lit comme suit: —

"En vertu des présentes la compagnie du chemin de fer sera le propriétaire absolu des propriétés."

L'acte de concession renferme deux réserves. En premier lieu il y a une réserve au sujet des terrains miniers, et en second lieu la Couronne se réserve le droit de reprendre les terres qui bordent les lacs et les rivières pour l'établissement de chemins. Chacune de ces réserves fut insérée dans l'acte de concession conformément aux dispositions des Statuts de la province de Québec. Mais l'acte de concession en faveur de la compagnie du chemin de fer ne renferme aucune réserve quelconque au sujet de chemins dont il est question dans les arrêtés en conseil de 1794.

Depuis 1794, la Couronne s'est réservée le titre absolu sur les terres non concédées, et en sa qualité de seul propriétaire de ces terres, elle avait le droit de faire des concessions, soit avec ou sans des réserves concernant les chemins, selon

qu'elle le jugerait à propos. La Couronne n'était pas à tout jamais liée par les termes des arrêtés en conseil de 1794. Elle pouvait les changer ou les abroger en tout temps. L'acte de concession en faveur de la compagnie du chemin de fer passé en 1933 comporta une révocation de toutes dispositions des arrêtés en conseil de 1794 relatives aux réserves de chemins pour ce qui concernait les terres concédées à la compagnie du chemin de fer.

Pour les raisons ci-dessus énumérées, je suis d'avis que les terrains de la compagnie du chemin de fer dans le Canton de Baby ne sont pas sujets à aucune charge ou servitude concernant les réserves de chemin en vertu des arrêtés en conseil de 1794. Le chemin dont il s'agit dans la présente requête n'était pas un chemin public, soit pour l'avenir ou autrement, lorsque la compagnie du chemin de fer a obtenu son droit de passage de la province en 1933.

Les conclusions auxquelles j'en suis arrivé, basées sur les faits et circonstances précités, peuvent se résumer comme suit:—

1. Les arrêtés en conseil de 1794 ne constituèrent pas de réserves valides pour des chemins à l'encontre des concessionnaires subséquents de la Couronne. Cause du C.P.R vs le ministère des Terres et Forêts d'Ontario, rapportée à 27 C.R.C. pages 393 à 399, et S.C.R. (1923), pages 155 à 165.

2. La concession faite par la Couronne à la compagnie du chemin de fer en 1933 est suffisante en elle-même pour rejeter toute présomption en faveur d'une telle réserve qui pourrait autrement être soulevée soit à cause des arrêtés en conseil ci-dessus ou en raison de la pratique qu'on a suivie depuis plusieurs années dans les arpentages des Terres de la Couronne situées dans la province de Québec.

3. La compagnie du chemin de fer est antérieure en date par rapport au passage qui fait le sujet de la présente requête.

4. Le coût de construction et celui d'entretien dudit passage devrait être à la charge de la municipalité requérante.

Pour en arriver à ces conclusions, je n'ai pas laissé de côté la décision rendue par cette Commission, surtout le jugement du commissaire en chef suppléant auquel se sont ralliés deux commissaires au sujet de la récente requête dans la cause de Mistassini vs C.N.R., rapportée à 43 C.R.C. p. 84. Avec tout le respect pour ce jugement du commissaire en chef suppléant exprimé dans la cause ci-dessus, je ne puis m'accorder avec lui quant à la portée de l'arrêté en conseil du 30 octobre 1794, non plus que je suis d'accord avec les vues qu'il a exprimées par rapport aux articles 20 et 22 du Code Municipal de la province de Québec. Ces articles ne s'appliquent pas à une compagnie de chemin de fer incorporée en vertu d'un Acte du Parlement du Canada, sauf pour ce qui concerne les questions de drainage auxquelles pourvoit l'article 270 de la Loi des chemins de fer.

Je sais que les questions que j'ai essayé de traiter dans ce jugement sont en grande partie des questions de droit. Il y a peu de désaccord, s'il y en a, quant aux faits de la cause. Les avocats tant de la compagnie du chemin de fer Canadien du Pacifique que de la compagnie des chemins de fer Nationaux du Canada ont aussi représenté que les questions légales que soulève cette requête peuvent aussi bien dans l'avenir être soulevées, dans bien des cas, au sujet des passages à niveau dans toutes les parties situées au nord des provinces de Québec et d'Ontario. Il devient important par conséquent d'obtenir de la Cour Suprême du Canada une décision finale sur les questions légales que comporte cette requête afin que cette question puisse être définitivement déterminée pour l'avenir. A mon avis, la Commission devrait soumettre un factum à la Cour Suprême du Canada pour en obtenir son opinion, conformément aux dispositions de l'article 43 de la Loi des chemins de fer.

Le 6 avril 1936.

McLean, Commissaire en chef adjoint:

L'interprétation des arrêtés en Conseil en question impliquent des points de droit ou de juridiction. Je suis de l'avis du Commissaire en chef, tel qu'ex-

primé dans les motifs de son jugement, en date du 6 avril 1936, qu'il est important qu'il soit rendu une décision finale par la Cour Suprême du Canada sur les questions de droit qui ont été soulevées.

Je suis d'accord avec le Commissaire en chef dans son opinion que la Commission devrait soumettre un mémoire par écrit pour obtenir l'opinion de la Cour Suprême du Canada, conformément aux dispositions de l'article 43 de la Loi des chemins de fer.

LE 8 AVRIL 1936.

GARCEAU, F. N., Commissaire en chef suppléant:—

La présente requête constitue un appel de l'ordonnance de la Commission autorisant la construction d'un passage de voie publique à travers la voie ferrée de la requérante dans le canton de Baby, Qué., et ordonnant que les dépenses de construction et d'entretien dudit passage soient assumées par la requérante. Les raisons du présent appel sont les suivantes.

(*a*) Les arrêtés-en-Conseil du 10 et 30 octobre 1794 n'étaient pas des actes législatifs.

(b) S'ils étaient des actes législatifs, celui du 10 octobre 1794 s'appliquait à des cantons riverains et le canton de Baby en constitue un. Dans cet arrêté-en-Conseil il n'est pas fait mention de servitude pour les chemins.

(c) Si ces arrêtés-en-Conseil de même que les instructions royales doivent être considérés comme des actes législatifs, le titre donné par la Couronne au chemin de fer révoque toute servitude.

Les raisons pour lesquelles ces arrêtés-en-Conseil devraient être considérés comme des actes législatifs se trouvent dans le jugement qui a été rendu par la Commission; dans la lettre-plaidoyer du procureur du C.P.R., M. Flintoft, le 29 août 1934, voir page 2:—

> "Les cantons dans la province, lorsqu'ils ont été organisés depuis 1867 ne sont plus régis par l'arrêté-en-Conseil de 1794 mais par la Loi provinciale..."

Page 3:—

> "Comme l'arrêté-en-Conseil de 1794 a été en effet révoqué, ayant été remplacé et annulé par la Loi provinciale adoptée depuis la Confédération, la réserve faite dans cet arrêté-en-Conseil pour les servitudes des chemins de fer ne peut pas établir des droits d'ancienneté aux passages de voie publique situés dans des territoires organisés en canton depuis la Confédération."

Le canton de Baby, étant un canton riverain, la superficie de canton riverain ayant été établie par l'arrêté-en-Conseil du 10 octobre 1794, dans lequel il n'est pas fait mention d'une réserve pour les chemins, est néanmoins, sous l'autorité des instructions royales données à Lord Dorchester, sujet à une servitude en faveur des chemins.

L'arrêté-en-Conseil du 30 octobre 1794 ne crée pas une servitude en faveur des chemins mais mentionne seulement l'existence de telle servitude; la lecture des deux arrêtés-en-Conseil démontre qu'ils ont seulement déterminé la superficie du canton et de chaque lot. Les instructions royales créèrent les cantons, la servitude en faveur des chemins et les réserves pour le clergé, dont l'étendue devait être déterminée par les instructions données aux arpenteurs par le Gouverneur en son Conseil.

L'existence de telle servitude sur tous les territoires inhabités sont établis par les instructions royales.

L'Exhibit produit par la municipalité démontre qu'en 1802 l'arpenteur reçut des instructions de subdiviser le canton de "Onslow", un canton riverain, en des lots de 200 acres plus la servitude de 5%. L'arrêté-en-Conseil de 1866 adopté par le gouvernement ayant juridiction sur les deux Canadas décrète:

"Il est nécessaire de pourvoir à l'établissement de chemins;...le Commissaire ordonne, en conséquence, qu'une allocation de 5% de la superficie du terrain soit réservée pour les chemins comme cela se fait en Bas-Canada..."

(Les cantons qui devraient être créés étaient situés sur la rive nord des Lacs Huron et Supérieur, des cantons riverains). Il est indéniable que la servitude en faveur de chemins publics a toujours existé dans Québec avant 1867 sur les cantons riverains ou intérieurs. Il n'y a pas de preuve que ces dispositions aient jamais été révoquées.

Le Code Municipal de Québec qui a été promulgué le 2 novembre 1871 s'applique à tous territoires de la province de Québec, sauf toute dérogation contenue dans une charte spéciale octroyée par la législature à une Municipalité. (Article 1)

Ceci est admis par M. Flintoft, dans ses commentaires du 29 août:—

"Les cantons créés depuis 1867 ne sont plus régis par l'arrêté-en-Conseil de 1794 mais par la Loi provinciale." (Le canton de Baby fut organisé en 1895).

Le Code Municipal est une loi provinciale. L'article 791 décrète:—

"Nulle indemnité ne doit être accordée pour le terrain nécessaire au premier chemin sur un lot, ni pour le terrain réservé pour un chemin public dans l'octroi ou concession d'un lot."

Cet article crée une autre servitude en faveur des chemins et confirme celles qui sont mentionnées dans l'octroi ou concession du lot. Il ne peut se comprendre autrement, comme l'explique le procureur de la Municipalité. Il faut remarquer que cette servitude existe sur toutes et chacune des parties du lot. L'article 606 du Code Municipal de Québec dit:—

"Si un lot est possédé ou occupé par partie par deux personnes ou plus, ces propriétaires ou occupants sont tenus solidairement aux travaux à faire sur tout le chemin de front de ce lot, lors même que la partie du lot possédée ou occupée par eux n'aurait pas front sur le chemin, sauf leur recours l'un contre l'autre en proportion de la valeur du terrain occupé par chacun d'eux."

Le jugement citait les articles 20 et 22 qui sont des actes législatifs de la juridiction exclusive de la province. L'Acte de l'Amérique Britannique du Nord a attribué aux provinces le pouvoir exclusif de légiférer sur les biens immeubles, droits civils, institutions municipales, etc.

Le canton de Baby fut créé en 1895 et partie d'icelui se trouve dans la limite de la Corporation de St-Eugène de Guigues. Cette dernière municipalité fut incorporée avant que le chemin de fer ait acquis aucun droit.

Toute propriété privée, à moins d'en être spécialement exemptée par une loi spéciale est assujettie aux dispositions du Code Municipal.

Ces dispositions du Code Municipal ne viennent pas en conflit avec l'article 256 de la Loi des chemins de fer qui donne à la Commission des chemins de fer le pouvoir absolu de décider si une traverse à niveau doit ou ne doit pas être construite, etc.

Je renverrais la requête; je maintiendrais l'ordonnance. Toutefois, comme l'interprétation des arrêtés-en-Conseil et des dispositions du Code Municipal de Québec impliquent des questions de droit ou de juridiction, je me rallie à l'opinion du Commissaire en chef et du Commissaire en chef adjoint: que les questions de droit ou de juridiction soient soumises à la Cour Suprême du Canada; qu'à cette fin un mémoire par écrit soit préparé par la Commission des chemins de fer conformément aux dispositions de l'article 43 de la Loi des chemins de fer du Canada.

Le 8 avril 1936.

ORDER No. 53016

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and the Order of the Board No. 52974, dated April 6, 1936.

File No. 34822.12

MONDAY, the 20th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that tolls are published from North Devon, New Brunswick, in Supplement No. 15 to Tariff C.R.C. No. E-4324, filed by the Canadian Pacific Railway Company,—

It is ordered: That the said Order No. 52974, dated April 6, 1936, be, and it is hereby, amended by striking out the words "South Devon," in paragraph 1 of the order, and substituting therefor the words "North Devon."

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53022

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

TUESDAY, the 21st day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders: That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement 16 to Tariff C.R.C. No. E-1226.
Supplement 55 to Tariff C.R.C. No. E-1234.
Supplement 116 to Tariff C.R.C. No. E-1235.
Supplement 35 to Tariff C.R.C. No. E-1238.
Supplement 19 to Tariff C.R.C. No. E-1745.
Supplement 57 to Tariff C.R.C. No. E-1804.
Supplement 33 to Tariff C.R.C. No. E-1829.
Supplement 22 to Tariff C.R.C. No. E-1906.
Supplement 27 to Tariff C.R.C. No. E-1911.
Supplement 24 to Tariff C.R.C. No. E-1974.
Supplement 25 to Tariff C.R.C. No. E-1974.
Supplement 22 to Tariff C.R.C. No. E-2070.
Supplement 17 to Tariff C.R.C. No. E-2248.
Supplement 1 to Tariff C.R.C. No. E-2381.
Tariff C.R.C. No. E-2392.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53043

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

WEDNESDAY, the 29th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. McLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in item 545 of first revised page 33, and item 550 of first revised page 34, of Tariff C.R.C. No. E-4757, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. E-4757, approved herein, are as follows:—

	From	Cents per 100 pounds
Item 545—	Saint John, N.B.	
	West Saint John, N.B.	
	To	
	Amherstburg, Ont.	37
	Caledonia, Ont.	36½
	Markham, Ont.	36½
Item 550—	Wales, Ont.	30
	Watford, Ont.	39

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53044

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

WEDNESDAY, the 29th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. McLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in items 85, 100, 145, 150, 425, 475, 480, 490, 550, 570, 645, 675, 690, 2205, 2720, 2725, 2730, and 2740 of Tariff C.R.C. No. E-4775, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said items of Tariff C.R.C. No. E-4775, approved herein, are as follows:—

Item		All cents per 100 pounds	
85		18	
100		20	
145		22½	
	To	C.L.	Any quantity
150	Saint John, N.B.	16½	22½
	West Saint John, N.B.	14	14
425		12½	
475		31½	

Item	To	All cents per 100 pounds Local	Furtherance
480	Fort William, Ont.	62½	
	Port Arthur, Ont.		44½
	Riviere du Loup, Que.	32½	
490		14½	
550		5	
	To		
570	Belleville,. Ont.	33	
	Brockville, Ont.	34½	
	Hamilton, Ont.	34	
	Kingston, Ont.	34	
	Leamington, Ont.	39	
	Montreal, Que.	29	
	Oshawa, Ont.	33	
	Port Colborne, Ont.	34½	
	St. Catharines, Ont.	34½	
	Sarnia, Ont.	41½	
	Thorold, Ont.	34½	
	Toronto, Ont.	33	
	Welland. Ont.	34½	
	Windsor, Ont.	41½	
		C.L.	Any quantity
645		15	20
		Minimum weights, lbs.	
	To	24.000	60,000
675	Edmundston. N.B.	33	
	Fredericton, N.B.	14½	
	Riviere du Loup, Que.	25	
	St. Stephen, N.B.	..	15
	Woodstock. N.B.	25	
690		18	
	To	Any Quantity	Lots 10,000 lbs. or more
2205	Chipman, N.B.	27½	24
	Minto, N.B.	30	
	Newcastle Bridge, N.B.	30	

2720 From Saint John, N.B.

To	Minimum weights, lbs. 30,000	40,000	60,000	80,000
Belleville, Ont.	..	39	34	31½
Brantford, Ont.	..	35	..	..
Brockville, Ont.	39	..	33	31
Chatham. Ont.	..	..	42	..
Chesterville, Ont.	40	..	..	..
Cornwall, Ont.	39	..	33	31
Drummondville, Que.	39½	..	..	..
Fort William, Ont.	..	..	37	35
Garthby, Que.	..	35½	..	..
Grand Mere, Que.	39½	..	..	..
Guelph, Ont.	..	34½	..	..
Hamilton, Ont.	..	..	33	31
Kingston, Ont.	..	..	32½	30½
Kitchener, Ont.	..	35	..	..
Levis, Que.	..	..	31½	27½
Lindsay, Ont.	..	36½	..	..

From Saint John, N.B.

All cents per 100 pounds
Minimum weights, lbs.

2725 To	30,000	40,000	60,000	80,000
Listowel, Ont.	..	41	..	..
London, Ont.	..	..	33½	31
Magog, Que.	37½	..	..	..
Megantic, Que.	41	..	..	..
Montreal, Que.	..	..	30½	25
Niagara Falls, Ont.	..	35½	33	..
Orillia. Ont.	..	36½	..	..
Oshawa, Ont.	..	35	33½	31
Ottawa, Ont.	..	..	33	31
Owen Sound, Ont.	..	38½	36½	..
Parry Sound, Ont.	..	49	..	..
Pembroke, Ont.	42½	..	..	..
Perth, Ont.	42½	..	..	..
Peterboro, Ont.	..	35½	..	..
Port Arthur, Ont.	..	..	37	35
Quebec, Que.	..	..	30½	27

	To	Cents per 100 pounds Minimum weights, lbs. 30,000	40,000	60,000	80,000
2730	St. Catharines, Ont.	..	35½	33	..
	St. Thomas, Ont.	..	39½	..	..
	Sarnia, Ont.	..	43	36½	34
	Sault Ste. Marie, Ont.	58½	..	36	34
	Shawinigan Falls, Que.	39½	..	..	..
	Sherbrooke, Que.	38½	..	..	..
	Simcoe, Ont.	..	38	..	33½
	Smiths Falls, Ont.	41	..	..	..
	Thetford Mines, Que.	44½	35½	..	..
	Thorold, Ont.	..	..	33	31
	Toronto, Ont.	..	..	33½	31
	Trois Rivieres, Que.	..	..	31	26
	Tweed, Ont.	..	44	..	..
	West Fort William, Ont.	..	..	37	35
	Windsor, Ont.	..	43	36½	34
2740	To			Any quantity	
	Chipman, N.B.			25	
	Minto, N.B. / Newcastle Bridge, N.B.			27½	

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53045

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 29th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 994, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 994, approved herein, is 22½ cents per 100 pounds; one and one-half cents per 100 pounds to be deducted account of water movement.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53046

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 29th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 997, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 997, approved herein, are as follows:—

To	Cents per 100 pounds
Grand Falls, N.B.	22½
Woodstock, N.B.	22½

one and one-half cents per 100 pounds to be deducted account of water movement.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53047

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 29th day of April, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 999, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 999, approved herein, are as follows:—

	Cents per 100 pounds
Item 1—From Halifax, N.S.	43½
" Yarmouth, N.S.	45
Item 2—Halifax, N.S., rates in effect prior to July 1, 1927	..
Item 3—From Halifax, N.S.	34
" Yarmouth, N.S.	36½
Item 4—To Guelph, Ont.	45½
" Simcoe, Ont.	45
" Toronto, Ont.	40½

one and one-half cents per 100 pounds to be deducted account of water movement.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53048

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

WEDNESDAY, the 29th day of April, A.D. 1936.

File No. 34822.13

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 1000, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 1000, approved herein, are as follows:—

	Cents per 100 pounds Minimum weight, lbs.			
To	30,000	40,000	60,000	80,000
Belleville, Ont.	..	40	34½	32½
Brantford, Ont.	..	36	..	..
Brockville, Ont.	40	..	34	31½
Chatham, Ont.	..	..	43	..
Chesterville, Ont.	41	..	..	..
Cornwall, Ont.	40	..	34	31½
Drummondville, Que.	41	..	..	..
Fort William, Ont.	..	..	38	36
Garthby, Que.	..	37	..	..
Grand Mere, Que.	41	..	..	..
Guelph, Ont.	..	35½	..	..
Hamilton, Ont.	..	..	34	32
Kingston, Ont.	..	..	33½	31
Kitchener, Ont.	..	36	..	..
Levis, Que.	..	..	31½	27½
Lindsay, Ont.	..	37	..	..
Listowel, Ont.	..	42	..	..
London, Ont.	..	..	34	31½
Magog, Que.	39½	..	..	..
Megantic, Que.	41½	..	..	..
Montreal, Que.	..	..	32	26½
Niagara Falls, Ont.	..	36½	34	..
Orillia, Ont.	..	37½	..	..
Oshawa, Ont.	..	36	34½	32
Ottawa, Ont.	..	..	34	31½
Owen Sound, Ont.	..	39½	37	..
Parry Sound, Ont.	..	50	..	..
Pembroke, Ont.	44	..	..	..
Perth, Ont.	44	..	..	..
Peterboro, Ont.	..	37	..	..
Port Arthur, Ont.	..	..	38	36
Quebec, Que.	..	..	30½	27
St. Thomas, Ont.	..	40½	..	..
Sarnia, Ont.	..	44	37	35
Sault Ste. Marie, Ont.	60	..	36½	34½
Shawinigan Falls, Que.	41	..	..	..
Sherbrooke, Que.	39½	..	..	..
Simcoe, Ont.	..	39	..	34
Smiths Falls, Ont.	42½	..	..	..
Thetford Mines, Que.	47	38	..	..
Toronto, Ont.	..	..	34½	32
Trois Rivieres, Que.	..	..	32½	27½
Tweed, Ont.	..	45	..	..
West Fort William, Ont.	..	..	38	36
Windsor, Ont.	..	44	37	35

one and one-half cents per 100 pounds to be deducted account of water movement.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53059

In the matter of supplements to freight tariffs issued by the Crows Nest Southern Railway to be effective June 1, 1936, cancelling local rates between stations on the said railway within Canada, leaving no rates in effect.

File No. 39874

FRIDAY, the 1st day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*
G. A. STONE, *Commissioner.*

Whereas the above-mentioned supplements provide for cancellation of freight tariffs effective June 1, 1936, leaving no rates in effect and stating as a reason therefor the abandonment of the line of the Crows Nest Southern Railway Company extending from the International Boundary (south of Newgate, B.C.) to and including Fernie, B.C.;

And whereas the said Railway Company has not obtained the approval of the Board to abandon this line between the points herein named, as provided by section 165A of the Railway Act—

The Board therefore orders: That the following supplements to tariffs filed to be effective June 1, 1936, be, and they are hereby, disallowed, namely:—

Supplement 1 to Great Northern Railway Tariff C.R.C. 1798
Supplement 1 to Great Northern Railway Tariff C.R.C. 1804
Supplement 3 to Great Northern Railway Tariff C.R.C. 1956
Supplement 1 to Great Northern Railway Tariff C.R.C. 1989
Supplement 1 to Great Northern Railway Tariff C.R.C. 2174
Supplement 1 to Canadian Pacific Railway Tariff C.R.C. W-3295

H. GUTHRIE,
Chief Commissioner.

SUMMARIES OF ORDERS ISSUED BY THE BOARD OF RAILWAY COMMISSIONERS

52957. To be summarized later.

52958. Mar. 31—Directing C.N. Rys. to install automatic bell and wigwag at crossing near west of bridge over Matapedia river, at Ste. Florence, Que.

52959. Mar. 26—Relieving C.P.R. from maintaining cattle guards at crossings at mileage 34·21, 79·95, 81·90, 82·80 and 89·15 Kingston Sd. Ont.

52960. Mar. 26—Relieving New York Central R.R. from maintaining cattle guards at mile posts 56·47, 58·74 and 61·01, Tp. Walpole, Ont.

52961. Mar. 28—Relieving New York Central R.R. from maintaining cattle guards at mile posts 63·25, 65·51, 66·03, 70·35 and Town Line Road, Tp. Townsend, Ont.

52962. Mar. 30—Relieving C.P.R. from maintaining cattle guards at thirteen crossings on its Oshawa Subd'n, Ont.

52963. Mar. 30—Relieving C.P.R. from maintaining cattle guards at twelve crossings on its Orangeville Subd'n, Ont.

52964. Apl. 3—Relieving C.P.R. from maintaining cattle guards at seven crossings on the Hamilton-Goderich Subd'n, Ont.

52965. Apl. 4—Authorizing C.N. Rys. to construct a trestle on Lot 160, Cowichan Bay, Vancouver Island, B.C.

52966. Apl. 3—Declaring C.P.R. crossing at mileage 84·05 Stirling Subd'n, Alta., protected to Board's satisfaction.

52967. Apl. 3—Recommending to Governor in Council for sanction agreement between C.P.R. and Midland Ry. of Manitoba authorizing latter railway to connect and operate its trains over certain tracks of C.P.R. at Winnipeg, Man.

52968. May 1—Authorizing Midland Ry. of Manitoba to connect its tracks with tracks of C.P.R. at Winnipeg, Man

52969. Apl. 2—Declaring C.N. Rys. crossing, first west of Nixon Station, Ont., protected to Board's satisfaction.

52970. Apl. 6—Approving and authorizing clearances of drying kilns located on C.P.R. spur serving Boeckh Co., Ltd., at Parkdale, Ont.

52971. Apl. 3—Declaring C.N. Rys. crossing of Adam street, second crossing east of Richmond Station, Que. (Girard's Crossing), satisfactorily protected so long as speed limitation of 10 miles an hour is in effect.

52972. Apl. 4—Authorizing C.N. Rys. to extend bonding at crossing of Mountain road, west of village of Bic, Que.

52973. Apl. 6—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, toll published in Supp. 8 to tariff C.R.C. No. 3, filed by Maritime Coal, Ry. & Power Co., under sec. 9.

52974. Apl. 6—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in tariffs and supplements filed by C.P.R. under sec. 9.
52975.
52976.
52977.

52978. Apl. 6—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in item 63 of Supp. 42 to tariff C.R.C. No. 851, filed by Dominion Atlantic Ry. under sec. 9.

52979. Apl. 6—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, toll published on slack coal to North Devon, N.S., in Supp. 5 to tariff C.R.C. No. 194, filed by Fredericton and Grand Lake Coal & Ry. under sec. 9.

52980. Apl. 6—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in tariff C.R.C. No. 40, filed by Cumberland Ry. & Coal Co., under sec. 9.

52981. Apl. 7—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published to Kingston, Ont., in item 2732-A of Supp. 34 to tariff C.R.C. No. E-4742 filed by C.P.R. under sec. 9.

52982. Apl. 7—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in tariffs and supplements filed by the Dominion Atlantic Ry. under sec. 9.
52983.
52984.
52985.
52986.

52987. Apl. 6—Approving location of Shell Oil Co's bulk storage plant and 6-inch pipe under C.P.R. at Three Rivers, Que.

52988. Apl. 6—Authorizing Mun. of Bagot and Blythfield, Ont., to construct crossing over C.P.R. between Lots 15 and 16, Con. 12, Tp. Bagot, Co. Renfrew, Ont.

52989. Apl. 7—Declaring C.N. Rys. crossing of Norwich avenue, Woodstock, Ont., protected to Board's satisfaction.

52990. Apl. 4—Amending Order 52868, March 13, 1936, by striking out figures "$242.78" in 3rd line of paragraph 2 and substituting therefor figures "485.56" (Bells and wigwags at crossing of Michigan Central Ry. at Huron and Erie streets, Niagara Falls, Ont.).

52991. Apl. 4—Authorizing C.P.R. to lengthen operating circuits for bell and wigwag at crossing at mileage 58·39, Trois Rivières Subd'n, Maskinongé, Que.

52992. Apl. 7—Authorizing Rural Mun. of Ethelbert, Man., to construct highway crossing over C.N. Rys. on road between sec. 31-29 and sec. 6-30-21 W1M., Man.

52993. Apl. 7—Authorizing Tps. Medora and Wood to construct crossing over C.N. Rys. at Torrance, Ont.

52994. Apl. 7—Declaring C.N. Rys. crossing of Yale road, mileage 72·24 Yale Subd'n, B.C., protected to Board's satisfaction.

52995. Apl. 7—Declaring C.P.R. crossing immediately west of Whitby Station, Ont., protected to Board's satisfaction.

52996. Apl. 7—Authorizing C.P.R. to use and operate bridge No. 104·6 over Quoiock creek, Thompson Subd'n, B.C.

52997. Apl. 8—Approving location of C.P.R. Modified Standard No. 17A station at Winfield, Alta.

52998. Apl. 9—Directing that no motor trains shall be operated on Temiscouata Ry. after May 30. 1936, unless same are equipped with regulation air brake, installation of which has been approved by an Inspector of the Board.

52999. Apl. 7—Approving location of bulk storage plant and construction of 6-inch pipe line by Shell Oil Co., at Cobourg, Ont.

53000. Apl. 9—Recommending to Governor in Council for sanction agreement between Dominion Atlantic Ry. and His Majesty the King for joint use of tracks of His Majesty the King at Truro, N.S.

53001. Apl. 9—Recommending to Governor in Council for sanction agreement between Dominion Atlantic Ry. and His Majesty the King for joint use of tracks of His Majesty the King between Windsor Jct. and Halifax, N.S., together with station facilities.

53002. Apl. 9—Authorizing C.P.R. to construct spur to serve Royalties Oil & Share Corporation, Ltd., at Kneehill, Alta.

53003. Apl. 9—Authorizing B.C. Department Public Works to construct highway crossing over C.N. Rys. at Fort Fraser, B.C.

53004. Apl. 8—Relieving C.P.R. from maintaining cattle guards at mileage 88·20, 89·90, 90·80 and 91·8 Windsor Subd'n, Ont.

53005. Apl. 11—Refusing application of C.N. Rys. for leave to remove station agent at Dummer, Sask.

53006. Apl. 11—Authorizing C.N. Rys. to remove their station agent at Forward, Sask. (Caretaker to be appointed.)

53007. Apl. 14—Authorizing Canadian Carriers to publish on one day's notice tariffs and connecting link supplements to tariffs containing reduced rates on lumber, C.L., from Eastern Canadian points to Official Classification territory in the United States, subject to necessary authority being received from Interstate Commerce Commission.

53008. Apl. 15—Permitting C.P.R. to publish and file on one day's notice a supplement to tariff C.R.C. No. E-4775 correcting rate in item 2145 to Toronto, Ont., to read "20 cents per 100 lbs."

53009. Apl. 11—Refusing application of Vancouver, Victoria & Eastern Ry. for approval of abandonment of its line from Princeton, B.C., to International Boundary.

53010. Apl. 11—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in tariff C.R.C. No. 987 filed by Dominion Atlantic Ry. under sec. 9.

53011. Apl. 14—Amending Order 51484, October 31, 1934, by striking out paragraph 3 and substituting therefor clause directing that 40 per cent of cost of improving view at C.N. Rys. crossing just north of Falkenburg, Ont., be paid out of Railway Grade Crossing Fund.

53012. Apl. 15—Approving abandonment of operation of C.N. Rys. Nicolet Subd'n from St. Leonard Junction to Nicolet, Que., a distance of 14·7 miles.

53013. Apl. 16—Declaring Esquimalt & Nanaimo Ry. crossing, first north of Osborne Bay Station, B.C., protected to Board's satisfaction.

53014. Apl. 17—Declaring southbound traffic at Vancouver and Lulu Island Ry. crossing of 8th avenue, Vancouver, B.C., protected to Board's satisfaction.

53015. Apl. 16—Relieving New York Central R.R. from maintaining cattle guards at six crossings in Tp. North Cayuga, Ont.

53016. Apl. 20—Amending Order 52974, April 6, 1936, by striking out words "South Devon" in paragraph 1 and substituting therefor the words "North Devon" (Maritime Freight Rates—C.P.R.).

53017. Apl. 21—Authorizing B.C. Department Public Works to construct highway crossing over C.P.R. south of Sicamous, B.C.

53018. Apl. 20—Authorizing Northern Alberta Ry. to remove Wagner siding from mileage 169·4 to mileage 174·4, Alta.
53019. Apl. 20—Authorizing Northern Alberta Rys. to remove Widewater siding from mileage 174·9 to mileage 177·5, Alta.
53020. Apl. 20—Approving abandonment of Northern Alberta's Rys.' shelter station at Canyon Creek, Alta.
53021. Apl. 21—Authorizing C.N. Rys. to connect their railway with the spur of the Kapoor Lumber Co., Ltd., at mileage 36·63 Cowichan Sd., B.C.
53022. Apl. 21—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in tariffs filed by C.N. Rys. under sec. 3.
53023. Apl. 20—Declaring C.P.R. crossing 1·2 miles north of Brockville, Ont., protected to Board's satisfaction.
53024. Apl. 20—Authorizing C.N. Rys. to construct diversion of North Thompson Highway, near McLure, B.C.
53025. Apl. 21—Authorizing Ontario Department Northern Development to construct crossing over C.N. Rys. 1½ miles west of Armstrong, Ont.
53026. Apl. 20—Approving agreement between Bell Telephone Co., and Madame Anna Lemay Milot, owner of Le Téléphone Milot.
53027. Apl. 22—Declaring Vancouver and Lulu Island Ry. crossing of 14th avenue, Vancouver, B.C., protected to Board's satisfaction.
53028. Apl. 22—Authorizing Alberta Department Public Works to construct crossing over Lacombe & N.W. Ry. in north half of sec. 2-48-4 W5M., Alta.
53029. Apl. 22—Approving installation of electric interlocker in lieu of existing mechanical plant at crossing of C.N. Rys. and C.P.R. at Drummondville, Que.
53030. Apl. 23—Authorizing C.N. Rys. to operate over connections with C.P.R. at Iberville and Farnham, Que.
53031. Apl. 22—Declaring C.N. Rys. crossing, second, 1·48 miles west of Delhi, Ont., protected to Board's satisfaction.
53032. Apl. 24—Authorizing Tp. McIrvine, Ont., to construct crossing over C.N. Rys. at mileage 87·30 Fort Frances Subd'n, between River Lots 21 and 22, Tp. McIrvine, Ont.
53033. Apl. 24—Authorizing Tp. McIrvine to construct crossing of C.N. Rys. at mileage 166·32 Cusson Subd'n, between Lots 20 and 21, Tp. McIrvine, Ont.
53034. Apl. 25—Declaring C.N. Rys. crossing, second north of Tottenham Station, Ont., protected to Board's satisfaction.
53035. Apl. 28—Declaring C.N. Rys. crossing one mile east of Pottersburg, Ont., protected to Board's satisfaction.
53036. Apl. 28—Declaring C.P.R. crossing immediately east of Komoka Station, Ont., protected to Board's satisfaction.
53037. Apl. 28—Declaring C.P.R. crossing of Prince Edward street, Brighton, Ont., protected to Board's satisfaction.
53038. Apl. 27—Authorizing C.N. Rys. to operate their trains over crossing at mileage 33·7 Neepawa Subd'n, at Neepawa, Man., without stopping.
53039. Apl. 27—Authorizing New York Central R.R. to install bells and wigwags in lieu of lightning flash signals at crossing of Thamesville road, Tp. Howard, Co. Kent, Ont.
53040. Apl. 28—Authorizing C.N. Rys. to construct proposed spur for Eastern Hay and Feed Co., Ltd., across Rambler street, Amherst, Ont.
53041. Apl. 28—Refusing application of C.N. Rys. to close station at Inkerman, N.B.
53042. Apl. 28—Refusing application of C.N. Rys. to close station at Cacouna, Que., from October 1 to May 31, each year.
53043. Apl. 29—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls pub-
53044. lished in tariffs and supplements filed by C.P.R. under sec. 9.
53045. Apl. 29—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls pub-
53046. lished in tariffs and supplements filed by Dominion Atlantic Ry. under
53047. sec. 9.
53048.
53049. Apl. 30—Authorizing C.N. Rys. to carry out proposed changes in signal circuits of bells and wigwags protecting first crossing east of Lynden Station, Ont.
53050. Apl. 30—Authorizing C.P.R. to construct highway crossing in SW. ¼ of sec. 19-10-22 W4M., north of Whitney Station, Alta.
53051. Apl. 27—Authorizing New York Central R.R. to install bells and wigwags in lieu of lightning flash signals at crossing of Scane road, 1·26 miles west of Ridgetown, Ont.
53052. Apl. 27—Authorizing New York Central R.R. to install bells and wigwags in lieu of lightning flash signals at crossing of Middle Town road 0·29 of a mile east of Cornell, Ont.
53053. Apl. 28—Authorizing New York Central R.R. to install bells and wigwags in lieu of lightning flash signals at crossing of Town Line road, 0·36 of a mile east of Essex, Ont.

53054. Apl. 28—Authorizing New York Central R.R. to install bells and wigwags in lieu of lightning flash signals at crossing of 5th Concession road 2·52 miles west of Tilbury, Ont.

53055. Apl. 28—Authorizing New York Central R.R. to install bells and wigwags in lieu of lightning flash signals at crossing of Thomas street, Essex, Ont.

53056. Apl. 28—Authorizing New York Central R.R. to install bells and wigwags in lieu of lightning flash signals at crossing of Town Line road between Tps. Harwich and Howard, Co. Kent, Ont.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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In the matter of the application for the re-establishment of train service between Deschaillons and Levis, Quebec,—Canadian National Railways.

(File No. 27563.180)

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER:

This is an application by a large number of interested parties in the county of Lotbiniere, to compel the Canadian National Railways to continue the train service which formerly existed between Parisville and Deschaillons, in the county of Lotbiniere. A number of municipalities in the county of Lotbiniere have petitioned to have this train service re-established. It appears that the railway between the above points has been operated for something over forty years. This railway was originally constructed by the Megantic Railway Company and in the year 1920 was acquired by the Crown, and the operation of the railway was placed under the Canadian National Railways. Deschaillons is situate on the south bank of the River St. Lawrence and has a population of about 1,800 people. Several small industries are established there and one brick plant which is said to give employment to from 30 to 40 men, and has a capacity for turning out 15,000,000 bricks per annum. Deschaillons is perhaps the most important point concerned in the present application. In the summer months Deschaillons has transportation facilities both by water and provincial highway which runs along the southern bank of the river St. Lawrence, but during the winter months Deschaillons is dependent to a large extent upon the railway which since 1931 operates only as far as Parisville, a distance of 3·6 miles from Deschaillons.

In August, 1931, the Canadian National Railways decided to abandon its line of railway between Parisville and Deschaillons, and since that date operation of this portion of the line has been discontinued. This action was deemed necessary by the railway company because the line in question was in urgent need of repair if operation were to be continued, and these repairs called for an immediate expenditure of a substantial sum of money. For many years this portion of the road had been operated by the railway company at an annual loss, and it was considered by the railway company that the business existing in 1931 did not, and the prospect of future business would not, warrant the expenditure involved in repairing and maintaining the line. Near Deschaillons

the railway crosses the Du Chene river over which there is erected a long trestle bridge which in 1931 was badly in need of repair. It is estimated by the railway company that to rebuild this bridge would cost in the neighbourhood of from $30,000 to $40,000, but at the same time railroad officials admitted that a present expenditure of $10,000 with subsequent expenditures of $10,000 a year for two or three years would probably place the bridge in a satisfactory condition from the point of railway operation. Since the abandonment of the line in August, 1931, down to the present time, nothing whatever has been spent upon the bridge or upon the road-bed, both of which are now very much out of repair. The road-bed has been overgrown with weeds and underbrush, and it is said that the ties are for the most part rotted out.

At the time of the abandonment of this portion of the line in 1931 a railway company was not required to obtain the approval of the Board before abandoning portions of its line. The amendment to the Railway Act providing for the Board's approval to abandonments was enacted in 1933, when section 165A was inserted in the Railway Act. Counsel for the railway company maintain that the Board has no jurisdiction whatever in regard to the abandonment of the line between Deschaillons and Parisville, which took place in 1931, and I am inclined to agree with that view of the matter, particularly having regard to the decision of the Board in the case of Caledon and Albion Townships vs. Canadian Pacific Railway reported in 40 C.R.C. p. 228.

Prior to the amendment made to the Railway Act in 1933 by the enactment of section 165A, in my opinion a railway company might abandon any portion of its line of railway without reference to the Board, unless there existed in its Act of incorporation, or in some other Act, some provision against its so doing, or unless the company was bound to continue operation under the terms of some contract or agreement in which it had entered. In the present case it does not appear that there exists any special statutory enactment or agreement which might operate to prevent abandonment by the railway company, or impose upon it an obligation for continuous operation. I, therefore, am of opinion that this Board has no jurisdiction to make any order in respect of the abandonment of the line between Parisville and Deschaillons which took place in August, 1931.

Under these circumstances, I think the application must be dismissed.

March 30, 1936.

The Assistant Chief Commissioner concurred.

Garceau, F.N., Deputy Chief Commissioner:—(dissenting)

This abandoned line was originally the Lotbiniere and Megantic Railway incorporated by 52 Victoria, chapter 89 (Quebec statute). By 54 Victoria, chapter 88, land subsidies to the extent of 250,000 acres were granted to the company with obligations attached to the payment of these subsidies; these obligations are mentioned in section 8 of this statute which reads as follows:—

> (3) "Before claiming any portion of the subsidies above mentioned, the company shall establish, to the satisfaction of the Lieutenant-Governor in Council, that it has sufficient means and is in a position to complete the projected road and keep it in good working order."

Statute 56 Victoria, chapter 4, section 3, added conditions and obligations to the payment of the subsidies. Sections 3 and 4 say:—

> (3) ". . . no such company shall exact or receive the payment of the whole or any part of any subsidy in money or lands to it granted, unless

it has proved, to the satisfaction of the Lieutenant-Governor in Council, that it is in a position to maintain its line in regular operation, by itself or by another company."

(4) "Any law to the contrary notwithstanding, no company shall have a right to any subsidy from the Government unless it has complied with all the requirements of the preceding sections and unless the formalities thereby required have been observed."

These dispositions are reproduced in the Revised Statutes of Quebec, 1925, chapter 5, section 10 (Vol. 5).

This railway is now amalgated with the Canadian National Railway system and is under the jurisdiction of the Board since this amalgamation which took place prior to the year 1930.

Mr. Rand, Canadian National Railways counsel, says in one of his submissions:—

"This abandonment of service took place on August 26, 1931, at which time it was not necessary to place the matter before the Board." (Letter dated October 1, 1935.)

Hon. Mr. Francoeur, speaking for the applicants, said:—

"This subsidy was granted on condition that the system be completed from Glen Lloyd, which is about twenty-five miles from Deschaillons and that the railway *should be maintained in operation as it was built, maintained in a good state of operation.* That was a condition of the grant of the subsidy given to the company. The Government at that time paid to the company, and as a matter of fact, the company received from the Government of the province exactly $131,000. It was paid before the railway was bought by the Government." (Evidence, p. 74.)

The Board has held that prior to the enactment of section 165A (33) the railways which were not bound to operate by statutory dispositions, contracts, or agreements, could at will abandon the whole or part of their lines; it was decided, even, that an implicit moral obligation to operate could be a bar to abandonment (Vol. 23, Board's Judgments, Orders, Regulations and Rulings, p. 299 at 303):—

"It can be argued with some force that these purchases" (of land from the C.P.R.) "were made on the implied representation by the company that the line in question would continue to operate and that it would be entirely unfair to these purchasers to permit the company at the present time to abandon this line."

The abandonment was refused principally on that ground.

The first question to decide is whether the Board has jurisdiction to grant the application, order the railway to resume its service to Deschaillons.

I submit that the Lotbinière and Megantic Railway had accepted the implied and explicit obligations imposed by the statutes above mentioned when they accepted the payment of the subsidies, that is to say, to maintain and operate their line. We have no evidence that any contract was passed, but we may presume that it had been passed, because the Government would not have paid the subsidies unless such contracts had been entered into and signed by the company (see chapter 4, 56 Victoria). The Canadian National Railways, unless the contrary is established, are under the same obligations as the former railway to which they are substituted.

Section 153 of the Railway Act is formal and says:—

(1) "Notwithstanding anything in any agreement made or sanctioned under the provisions of the last two preceding sections, every act, matter or thing done, effected or confirmed under or by virtue of this Act, or the Special Act, before the date of the coming into effect of such agreement, shall be as valid as if such agreement had never come into effect; and such agreement shall be subject and without prejudice to every act, matter or thing, present or future, which would be incident to, or consequent upon such act, matter or thing if such agreement had never come into effect.

(2) "In the case of an agreement for amalgamation, as to all acts, matters and things so done, effected or confirmed, and as to all such rights, liabilities, claims and demands, the amalgamated company shall for all purposes stand in the place and represent the companies who are parties thereto and the generality of the provisions of this section shall not be deemed to be restricted thereby."

The former railway company received $131,000 for services to be rendered to the public, to operate: even if the wording of the provisions referred to were not specific, it should be understood and interpreted in such a way as to have some effect.

Public moneys were not given for the sole purpose of building and maintaining the railway in a proper state of repair but also to operate it; it could not be otherwise, and if we refer to contracts exacted by the statute, we find these clauses:—

(*e*) "The said company shall be bound, after the completion of the works on its subsidized line as above described and required, to constantly maintain the same in good order and condition as well as the rolling stock required for the regular running of trains in accordance with the needs of traffic and of the travelling public; and it further binds itself to operate such railway without interruption and to faithfully fulfil this obligation subject to all lawful charges and responsibilities;

(*f*) "The land subsidy above mentioned shall be granted or conceded in the manner above indicated, solely under such conditions as the Lieutenant-Governor in Council may determine to assure the right of running, and the traffic arrangements, as well as all other rights calculated to procure the said company, party of the second part, or its assigns, all possible accommodation and facilities and equal running rates with and upon all other railways connecting with the line belonging to the company, party of the second part;

(*g*) "It is also agreed that the said railway line and the works dependent thereon as well as all the rights, privileges, immunities, personal and real property of any kind, whatsoever, belonging to the said company, party of the second part, shall after the completion of the said line of railway and of the works connected therewith, be deemed to be the property of the said company, subject to the charges and obligations above specified and which would become applicable should occasion arise."

With due deference for the opinion of my colleagues, as expressed in the majority judgment, I believe that the railways could not legally abandon their operations in 1931 without authorization from the Board.

The Board having jurisdiction, is it in the interest of the public that the petition be granted?

The railway company has filed statements showing the earnings from Deschaillons since 1932 up to 1935, inclusively (exhibit No. 1). These receipts

which were in 1932, $2,555.55, were in 1935, $1,399.15. Mr. Rand has admitted that the receipts from Deschaillons in 1930 were $17,000, (Evidence, p. 115.)

What were the receipts prior to 1930, we do not know, but we can safely presume that they were higher than those above mentioned because, in 1930, the depression was being felt acutely.

The railway, having abandoned part of its line in 1931, the revenues fell to $2,555.55 in 1932. In 1935, they received only $1,399.15, a decrease of 40 per cent from 1932, when the economic conditions were much better everywhere and new industries had been built in Deschaillons; a decrease of 1,000 per cent from 1930, before the abandonment. Why this tremendous loss?

The depression is responsible for a small percentage of this loss, the abandonment for most of it and the poor service provided, for the balance.

I said the depression was responsible for a small percentage of the 1,000 per cent decrease in revenues since 1930. There is the same population, more industries than ever. Hundreds of thousands of dollars have been spent on a single brickyard.

The traffic exists but it is left wilfully by the railways to other carriers.

In 1930, other carriers were operating but so were the railways.

Abandonment was the major factor of such a loss. In 1930 the earnings were $17,100; in 1932 (the abandonment of the station as an agency took place in August, 1931) the earnings were only of $2,555.55 and, finally, they dropped to $1,399.15 in 1935 when trade was generally over 50 per cent greater than in 1932. These figures establish the result of abandonment. As to the service provided, I shall quote Hon. Mr. Francœur (Evidence, pp. 126 to 129):—

> "Formerly, until a few years ago, the railways made a profit. We say now that it is the competition between the road and the rail. If the railways are experiencing this competition to-day, it is somewhat their fault because they have not foreseen that with the new road constructions there will undoubtedly be this competition. If the Railways had foreseen in our country, as they did in Europe, for example, what was bound to happen, they would have taken measures to give the public the railway service it desired and they would have made profits. Instead of having this competition against them, they would themselves have made this competition with the road . . ."
>
> "They take as an argument, the amount of business there has been in the course of the last few years. Obviously, they cannot take that stand. The Company has cut off the service as far as Deschaillons and even the trains. To-day, the tendency is still to reduce the service under the pretext that the receipts do not meet the expenses. We have protested against the abandonment of the trains as far as Deschaillons and also against the abandonment of certain trains.
>
> "But if they wished to increase the utility of this railway to the public, the accommodation of this service, and to proceed to Quebec instead of going to Levis, business would increase and the railway would have greater receipts.
>
> "There are not only industrialists and merchants at Deschaillons and thereabouts. There is especially the agricultural class. The farmers who sell hay and other products come to Quebec to sell their produce every week. But they have first to go to Parisville or to Fortierville to take the train. Then, instead of disembarking at Quebec, they arrive at Levis and are obliged to cross the river to get to Lower Quebec . . ."
>
> "Mr. Garceau: Does not this freight from the intercolonial cross to Quebec over the bridge"?
>
> "Mr. Francœur: Not at all. Besides, it arrives at Lower Quebec, while, if this service used Quebec bridge to get into the city, the farmers

would unload their produce at the Station Palais, near the St. Roch market. Instead of taking the natural route to come to Quebec, the trains of this Company, Lotbiniere and Megantic, go opposite the bridge and proceed to Levis. No business is done at Levis. Levis is not the centre where all the people from that district come to do business . . ."

"Mr. FRANCŒUR: Passenger cars transport merchandise at the same time. It is what they call a mixed train, and the farmers who transport their produce have their produce with them. Consequently, with this service, it is not surprising that the railway does not have better results.

"Besides, travellers from Deschaillons and neighboring parishes who wish to take the train are constrained to get up about five o'clock to take the seven o'clock train to Parisville. It is practically an impossible hour. It is the same thing returning; the train leaves Levis at ten to six and does not get to Parisville till ten in the evening. Which means that those who are obliged to go by coach from Parisville to their homes ten or a dozen miles away, arrive rather late . . .

"In Europe, as here, they have other ways besides railways, but the railway companies, in France and in England, have established transportation systems on the rails as on the road to accommodate the public and avoid all competition on the part of private companies. Consequently, the railways themselves give the public satisfaction and, in this way, these services are maintained and all competition is avoided.

"But here, instead of accommodating the public, they do their best to diminish every facility. I think these are considerations which the gentlemen of the Commission must examine and must take into consideration."

The evidence heard at various sittings of the Board, the complaints received, corroborate the remarks made by Mr. Francœur in connection with the service given by the railway on its secondary or branch lines in the central eastern part of the province, south of the St. Lawrence, where they have the rail monopoly.

The density of population in proportion to railway mileage is a criterion of the potentialities of passenger, l.c.l. and express traffic and, to a lesser degree, of carload traffic.

The report of the Royal Commission on Transportation, 1932, known as the Duff Report, corroborates this assertion.

It says, at page 39: "Of all the countries of the world, Canada has the smallest population per mile of railway. In the United States the population per mile of railway is more than double that of the Dominion."

On the same page, the report establishes that for the whole of Canada the proportion is 236 per mile and it would be for the U.S.A. over 472.

The *Montreal Star* published over the signature of "Justitia" that 497 persons per railway mile is the proportion in the United States.

The ratio for Quebec is 559·1 (see page 39 of the report).

If this province were considered apart, it would have 63 persons more per railway mile than the United States, or 12⅓ per cent; 251 more than Ontario, or 80 per cent, Ontario having 302·9; 407 more than Manitoba, or 270 per cent, Manitoba having 151·9; 491 more than Saskatchewan, or over 400 per cent, Saskatchewan having 108; 442 more than Alberta, or 380 per cent, Alberta having 117·7.

These figures establish that the excess railway mileage with regard to the population does not exist in Quebec; consequently potentialities of passenger, l.c.l. and express traffic are greater there than in any other province.

If Quebec as a unit has so little railway mileage in regard not only to the other provinces but in regard to the U.S.A., let us consider the section of this province where the Canadian National Railways have the rail monopoly and see if they are justified in abandoning any part of their lines and giving such inadequate service in that particular section.

If we consider the railway map of the Dominion, we see first the corroboration of my previous assertions as to mileage and then that Montreal, Sherbrooke, Quebec, can be considered the apexes of a triangle within which area the following counties are included: Chambly, Verchères, Richelieu, Yamaska, Nicolet, Lotbiniere, Levis, Rouville, St. Hyacinthe, Bagot, Drummond, Arthabaska, Shefford, Richmond, Sherbrooke.

The map will also show that the Canadian National Railways are the only rail carriers in that region except for the branch lines of the Canadian Pacific Railway, Drummondville to Foster Junction and St. Guillaume to Farnham, and, outside of the triangle, west from Sherbrooke city, the Canadian Pacific Railway and the Quebec Central.

The census of 1931 gives to these counties, if we exclude Sherbrooke county, a population of 363,776, and, with Sherbrooke, of 401,162.

The Canadian National Railways' mileage is: Montreal via Sorel to Victoriaville, 128 miles; Montreal via Drummondville to Charny, 168·6; St. Hyacinthe to Levis via Richmond, 144 miles; Richmond to Sherbrooke, 24·6; St. Leonard to Nicolet, 14·7 miles; Parisville to Villeroy, 14 miles; Bellevue Junction to St. Hyacinthe, 30·1; total, 524 miles.

The proportion of population in relation to Canadian National Railways mileage would be 764 persons to every mile of railway. If we include the 80 miles of the Canadian Pacific Railway lines, it would be 664, but this mileage ought not to be included because both of the Canadian Pacific Railway branch lines cross the Canadian National Railway, one at Drummondville and Acton Vale, the other at Ste. Rosalie and Abbotsford, and serve as feeders to Canadian National Railways' lines as far as passenger service is concerned.

As to the Quebec Central and Canadian Pacific Railway from Sherbrooke, they run east of the triangle and serve the more easterly section of the province.

A further study of the map will show that the Canadian National Railways lines run parallel northeasterly; there existed only four trunk lines connecting these rather distant parallel main lines: Bellevue Junction to St. Hyacinthe; Nicolet to St. Leonard; Doucet's Landing to Victoriaville; Deschaillons to Villeroy (the map shows a different aspect as to cross railway lines in the western provinces).

The railways have asked the abandonment of these branch lines; have succeeded with the Nicolet-St. Leonard application, have abandoned part of the Deschaillons-Villeroy line from Deschaillons to Parisville, from St. Gregoire to Fortierville, from St. Hyacinthe to Iberville, which last two lines I have not mentioned previously but which appear on the map filed in this case.

These various applications show the policy of the railways: curtailment of service, abandonment of lines, in one of the most densely populated areas of the Dominion where they have rail monopoly and, in winter, no competition from any transportation agency.

They would have brought their track mileage to 449 miles, or around 900 persons to every track mile, or 735 if we consider the Canadian Pacific Railway branch lines above spoken of.

In that triangle, the apexes are Montreal with its population of nearly a million; Sherbrooke city with 29,000; Quebec, with 130,000. There are many

prosperous industrial towns and cities: Sorel, a seaport, St. Hyacinthe, Granby, Drummondville, Richmond, Bromptonville, Windsor Mills, Nicolet, Victoriaville, Acton Vale and several other important centres.

The greater part of this territory is very fertile; mixed farming, the raising of hogs and cattle, dairy industry, are active, and the traffic potentialities for the railways are as great there as anywhere in Canada, there being no winter highway competition in most of this territory.

The railway map of 35 years ago would be virtually the same as to-day's except that the line Sorel to Doucet's Landing was built in 1908, but the population has increased from 257,760 to 401,162, the above-mentioned towns and cities have progressed and industry has developed tremendously.

These figures establish (*a*) that the hundreds of millions spent to create the excessive railway mileage were spent elsewhere; (*b*) that if the railways could operate then, with less potential traffic, they can do it now with more profit if they were giving as adequate a service as heretofore.

These facts and considerations might be thought extraneous to the present application; but they are not. They demonstrate the fallacy of the curtailment policy which the railways have adopted in regard to that section of Quebec where exists every element for successful operation, which policy has brought deficits, as shown in files dealing with the Nicolet-St. Leonard line (No. 39310.9); St. Hyacinthe to Bellevue (No. 39310.10); Victoriaville to St. Gregoire (No. 39310); and the present one.

I would ask the railway to read over the complaints on these files, their own admissions, especially regarding service between St. Hyacinthe and Sorel, St. Hyacinthe and Montreal, at week-ends or for low-fare excursions and consider if these operations were not such as to antagonize the travelling public and force it to use other carriers whenever possible.

In that same section of the country, the Canadian Pacific Railway runs two branch lines; the Board has received no complaints about them and although these branch lines serve a territory with less traffic potentialities than the Canadian National Railways' branch lines that it is desired to abondon, a daily service was maintained at suitable hours, while the Canadian National Railways from Sorel to St. Hyacinthe provided only a tri-weekly service and, often, not at the time scheduled.

The farmers served by the line Bellevue Junction to St. Hyacinthe undertook since depression to raise crops of potatoes; warehouses were built at St. Jude. A low freight rate was established in 1931 of 7 cents per hundred pounds and this rate "was not renewed in 1935 owing to the very limited amount of traffic received by the railways in Quebec on this scale, and *especially in view of the fact that we ascertained that owing to the closing of the roads and to cold weather in the province of Quebec during the winter, advantage was taken of the scale to ship potatoes by rail, whereas very few, if any, shipments were made during summer.* In view of this fact, it was decided to discontinue truck competitive rates *in the province of Quebec* this year." (R. W. Long, General Traffic Manager, Letter of April 4, 1936).

The above declaration needs no commentary but it illustrates the policy of the railways, the reasons for its failure, i.e., the cancellation of rates that brought rail traffic, resulting in the multiplication of highway carriers.

The Canadian National Railways' Report of operations during 1935, at page 14, says:—

> "It is becoming increasingly certain that any substantial improvement in net earnings can be secured in no other way than by increased volume of traffic and, in the opinion of the Trustees, it is in the public interest that the way out of the present difficulties be found in an expan-

sion of earnings rather than by way of a further curtailment of railway expenditures. The latter process is a negative one."

This declaration is the condemnation of the policy pursued these last years; of the applications above-mentioned and the refusal to grant the present one.

It is the corroboration of Mr. Francoeur's submissions and of the assertions above quoted.

But if the railways admit the necessity of expansion of the volume of traffic, they are still unwilling to take proper means to assure such expansion.

The report, at page 15, says:—

> "Plainly the vital need of the Railway is a return to something like average traffic volume. There is no doubt whatever that the lessons learned as a result of the depression have been such that a substantial improvement in net income will be obtained from a given amount of gross revenue *provided freight and passenger rates, rates of pay and prices of material remain substantially at their previous levels.*"

Then, how can they expect to recover the traffic lost to other carriers if they do not lower their rates? Or, are they still only relying on grain export? Do they ignore the changed conditions as to the possibilities of such traffic?

It has been their plight in the past not to evolve with changing conditions, but it should be expected that they learned through experience, the investigation made in the U.S.A. on freight rates and the judgment of the Interstate Commerce Commission on passenger rates.

Their report, at page 3, acknowledges the fact that low-fare excursions accrued net earnings; that advertising, the better-car equipment in the U.S.A., took passengers away from Canadian lines. Why not draw from these experiences the logical conclusions?

Since the 1935 report of the Canadian National Railways, the Canadian Railway Association announced a 13 per cent reduction in passenger fares and pullman accommodation; but the Baltimore and Ohio Railway, in the United States, will on the 2nd June, 1936, reduce their present rate of 3·6 cents per mile to 2 cents, a reduction of 44·4 per cent, following an Order of the I.C.C.; most probably the same rates will be granted by other railways in the United States.

The reduction of 13 per cent in Canada is not even a half measure; it will benefit only those actually using the railways. It is inadequate to cope with the other carriers, either on water or highways.

The new rates are not pre-war rates; then, the traveller could buy a 1,000 mile booklet at 2 cents a mile, or commutation tickets for long distances.

It took the railways years to realize the advantages of low-fare excursions; it seems that they are still blind to the advantages of generally reducing the rates to 2 cents a mile, even though this policy has proved beneficial elsewhere.

They ignore that they have not any more the monopoly of transport, especially in summer, that they must re-educate the public to the advantages of rail transport. It seems necessary to remind them of altered conditions.

The public is footing the bill for their deficits; it has the right to use them and the masses cannot travel at the actual rates but they can at low fares, as shown by the excursions which are patronized not by their regular clients but rather by persons who would not travel but for the cheap excursion rates. The same thing would happen with a rate of 2 cents a mile.

The report of the expert investigators to Co-ordinator Eastman, after two years' study on the possibility of lowering freight rates in order to increase railway earnings, has been known since July, 1935.

It declares that the railways can be made the *cheapest* and *speediest* public carriers with proper equipment.

The judgment of the Interstate Commerce Commission reduced the passenger rate, 3·6 cents as it is in Canada, to 2 cents. This judgment was based not only on the report of experts, but on the two years' experience of such a rate in south and western States where it had provoked increased net revenue.

This study establishes that neither the Duff Report nor even "Justitia" of the *Montreal Star* advise abandonment of lines under such conditions as those existing in this area of about 8,000 square miles; that the railways have at their disposal all the elements for successful operation; that instead of taking advantage of these elements, aiding the efforts of this industrious population to carry on and pay the piper for past extravagances to which it was a stranger, they refuse service, proper rates, even penalize the producers of the Yamaska Valley, cancelling rates because, on account of these rates rail transport was used instead of trucks, thereby hampering traffic.

I would grant the application, order the railway to rehabilitate their line from Deschaillons to Villeroy; if the Board has no jurisdiction over the line between Deschaillons and Parisville, on account of the abandonment of 1931, I would order the railways to run their trains from Parisville to Quebec instead of to Levis.

April 30, 1936.

(Traduction)

In re requête demandant le rétablissement du service des trains entre Deschaillons et Lévis, P.Q., sur la ligne des Chemins de fer Nationaux du Canada.

(Dossier No. 27563.180)

JUGEMENT

GUTHRIE, COMMISSAIRE EN CHEF:

Cette requête est faite par un grand nombre d'intéressés du Comté de Lotbinière pour obliger la compagnie des chemins de fer Nationaux du Canada de rétablir son service de trains qui existait autrefois entre Parisville et Deschaillons, dans le comté de Lotbinière. Des municipalités du Comté de Lotbinière ont présenté une requête pour la rétablissement de ce service de trains. Il appert que cette ligne de chemin de fer entre les endroits précités fut exploitée durant une période d'au delà de quarante ans. Cette ligne fut en premier lieu construite par la compagnie Megantic Railway et fut en 1920 acquise par la Couronne, et son exploitation fut mise sous le contrôle des chemins de fer Nationaux du Canada. Deschaillons est situé sur la rive sud du fleuve St-Laurent et a une population d'environ 1,800 habitants. Plusieurs petites industries y sont établies et il y a une briqueterie qui, dit-on, emploie de 30 à 40 hommes et dont le rendement se chiffre à 15,000,000 de briques par année. Deschaillons est peut-être l'endroit le plus important concerné dans la présente requête. Durant les mois d'été, Deschaillons a des facilités de transport par voie d'eau et par voie d'une route provinciale qui longe la rive sud du fleuve St-Laurent, mais durant les mois d'hiver, Deschaillons dépend en grande partie du chemin de fer qui, depuis 1931, ne se rend qu'à Parisville, soit une distance de 3·6 milles de Deschaillons.

En août 1931, la compagnie des chemins de fer Nationaux du Canada décida d'abandonner sa ligne entre Parisville et Deschaillons, et depuis cette date l'exploitation de cette partie de ligne a été discontinuée. Cette action fut jugée nécessaire par la compagnie du chemin de fer parce que la ligne en question avait grandement besoin de réparations si on devait en continuer

l'exploitation, et ces réparations comportaient une dépense immédiate d'une somme d'argent assez considérable. Durant plusieurs années, cette partie de la ligne avait été exploitée par la compagnie avec pertes annuelles, et celle-ci considéra que le volume du trafic qui existait en 1931 ne justifiait pas, non plus que les perspectives futures du trafic, la dépense impliquée dans la réparation et l'entretien de cette ligne. La ligne du chemin de fer près de Deschaillons traverse la rivière Duchêne sur un pont sur chevalets en bois qui, en 1931, avait grandement besoin d'être réparé. La compagnie du chemin de fer calcule que pour reconstruire ce pont il en coûterait environ $30,000 à $40,000, mais les officiers du chemin de fer admettent aussi qu'une dépense actuelle de $10,000 avec dépenses subséquentes de $10,000 par année durant une période de deux ou trois ans, mettrait probablement le pont dans une condition satisfaisante du point de vue d'exploitation ferroviaire. Depuis l'abandon de la ligne en août 1931 jusqu'à aujourd'hui aucun argent n'a été dépensé sur le pont ou sur l'emplacement de la voie, lesquels sont maintenant dans un bien mauvais état. Des mauvaises herbes et des broussailles ont croissé sur l'emplacement de la voie et on dit que les dormants sont pour la plus grande partie hors d'état.

Lors de l'abandon de cette partie de la ligne en 1931, une compagnie de chemin de fer n'était pas obligée d'obtenir l'approbation de la Commission avant d'abandonner des parties de sa ligne. L'amendement à la Loi des chemins de fer pourvoyant à l'approbation de la Commission pour l'abandon de lignes, fut adopté en 1933, alors que l'article 165-A fut inséré dans la loi des chemins de fer. L'avocat de la compagnie du chemin de fer a maintenu que la Commission n'avait aucune juridiction relativement à l'abandon de la ligne entre Deschaillons et Parisville qui a eu lieu en 1931, et je suis porté à être d'accord sur ce point, particulièrement si l'on tient compte de la décision de la Commission dans la cause des Cantons de Caledon et d'Albion vs la compagnie du chemin de fer Canadien du Pacifique, rapportée au Vol. 40 C. R. C. p. 228.

Avant l'amendement à la Loi des chemins de fer par l'adoption, en 1933, de l'article 165-A, une compagnie de chemin de fer, à mon avis, pouvait abandonner l'exploitation de toute partie de sa ligne sans en référer à la Commission, à moins qu'il n'existât dans sa loi d'incorporation ou dans toute autre loi, une disposition au contraire, ou à moins que la compagnie ne fût tenue d'en continuer l'exploitation aux termes d'un contrat ou d'une convention qu'elle avait passée. Dans le cas présent, il n'appert pas qu'il existe aucune loi spéciale ou convention qui puisse avoir l'effet d'empêcher l'abandon de sa ligne par la compagnie du chemin de fer, ou de lui imposer l'obligation d'en continuer l'exploitation. C'est pourquoi, je suis d'avis que la Commission n'a pas le pouvoir de rendre une ordonnance relativement à l'abandon de la ligne entre Parisville et Deschaillons qui a eu lieu en août 1931.

Dans les circonstances, je crois que la requête doit être refusée.

le 30 mars 1936.

Le Commissaire en chef adjoint s'est rallié au jugement ci-dessus.

Garceau, F. N., Commissaire en chef suppléant:—(dissident)

Cette ligne abandonnée était originairement le chemin de fer Lotbinière et Megantic incorporé par le Statut de Québec, 52 Victoria, chapitre 89. En vertu du chapitre 88 du Statut 54 Victoria, des subsides en terres jusqu'à une superficie de 250,000 acres furent accordés à la compagnie avec certaines obligations faisant partie du paiement de ces subsides; ces obligations sont mentionnées à l'article 8 de ce Statut, lequel se lit comme suit:—

(3) "Avant de réclamer aucune partie des subsides ci-dessus mentionnés, la compagnie devra établir à la satisfaction du lieutenant-

gouverneur en conseil qu'elle a des moyens satisfaisants et se trouve en état de compléter le chemin projeté et de le maintenir en bon état d'exploitation."

L'article 3 du chapitre 4 du Statut 56 Victoria ajoutait des conditions aux obligations de paiement des subsides. Les articles 3 et 4 stipulent:—

(3) " . . . et nulle telle compagnie ne peut exiger ni recevoir le paiement partiel ou total d'un subside en argent ou en terre à elle octroyé, à moins qu'elle n'ait démontré, à la satisfaction du lieutenant-gouverneur en conseil, qu'elle est en état d'exploiter régulièrement sa ligne, par elle-même ou par une autre compagnie."

(4) "Nonobstant toute loi à ce contraire, nulle compagnie n'aura droit à un subside du gouvernement, à moins qu'elle ne se soit conformée aux exigences des sections précédentes, et que les formalités y prescrites n'aient été observées."

Ces dispositions sont reproduites dans les Statuts Revisés de Québec de 1925, chapitre 5, article 10.

Ce chemin de fer fait maintenant partie du réseau des chemins de fer Nationaux du Canada et relève de la Commission depuis cette fusion qui s'est effectuée avant 1930.

M. Rand allègue dans une de ses déclarations "que la discontinuation du service date du 26 août 1931 alors qu'il n'était pas nécessaire de saisir la Commission de cette question" (lettre du 1er octobre 1935).

L'honorable M. Francœur, parlant au nom des requérants, dit: (page 74 de la preuve):

"Ce subside fut accordé à condition que la ligne fut complétée à partir de Glen Lloyd une station qui se trouve à environ vingt-cinq milles de Deschaillons, et que le chemin de fer *fut maintenu en exploitation comme il avait été construit, et maintenu en bon état d'exploitation.* C'était une condition de l'octroi du subside en faveur du chemin de fer. Le gouvernement paya alors à la compagnie, et comme question de fait, la compagnie reçut du gouvernement de la province exactement la somme de $131,000. Cette somme fut payée avant que le gouvernement fit l'acquisition de ce chemin de fer."

La Commission a déjà décidé qu'avant l'adoption de l'article 165-A (33) les chemins de fer qui n'étaient pas obligés par des dispositions statutaires, des contrats ou conventions, d'exploiter leurs lignes, pouvaient à volonté discontinuer l'exploitation de toute ou partie de leurs lignes, même elle a déclaré qu'une obligation morale ou implicite d'exploiter leurs lignes pouvait constituer un empêchement à l'abandon de lignes:

"On peut conclure avec vraisemblance que ces achats (terrains du C.P.R.) furent faits ou consentis par suite des représentations, au moins indirectes, par la compagnie que la ligne en question continuerait d'être exploitée et qu'il serait tout à fait injuste de permettre à la compagnie d'abandonner maintenant cette ligne." (Vol. 23, Jugements, Ordonnances et Règlements de la Commission, pp. 299 à 303.)

La requête fut refusée surtout pour les raisons mentionnées ci-dessus.

Le premier point à décider est de savoir si la Commission a le pouvoir d'accorder la requête et d'ordonner à la compagnie du chemin de fer de rétablir son service jusqu'à Deschaillons.

Je soumets que le chemin de fer Lotbinière & Megantic avait accepté les obligations implicites ou formelles que lui imposaient les Statuts que j'ai

mentionnés ci-dessus lorsqu'il a accepté le paiement des subsides, c'est-à-dire, de maintenir et d'exploiter sa ligne. Il n'y a rien dans la preuve pouvant indiquer qu'il y a eu un contrat de passé, mais nous devons présumer qu'il y en a eu un parce que la gouvernement ne pouvait verser aucun subside à moins qu'un tel contrat ait été passé et signé par la compagnie. (Voir chap. 4, 56 Victoria). La compagnie des chemins de fer Nationaux du Canada, à moins d'en démontrer le contraire, est soumise aux mêmes obligations que l'ancienne compagnie de chemin de fer à laquelle elle est substituée.

L'article 153 de la Loi des chemins de fer est spécifique et dit:

(1) "Nonobstant toute stipulation insérée dans un traité conclu ou sanctionné suivant les dispositions des deux articles qui précèdent, une action, opération ou chose faite, effectuée ou confirmée sous l'autorité ou en vertu de la présente loi ou de la loi spéciale, antérieurement à la date de l'entrée en vigueur de ce traité, est valable tout comme si ce traité n'avait jamais été exécuté; et ce traité est subordonné, sans y préjudicier aucunement, à toute semblable action, opération ou chose, et à tous droits, responsabilités, réclamations et prétentions, présents ou futurs, qui pourraient découler ou résulter de cette action, opération ou chose, si ce traité n'était jamais venu exécutoire.

(2) " S'il s'agit d'un traité de fusion, la compagnie née de la fusion, pour ce qui est de toutes les actions, opérations ou choses ainsi faites, effectuées ou confirmées, et de tous ces droits, responsabilités, réclamations et prétentions, occupe à toutes fins la position des compagnies parties au traité de fusion, et les représente, et la généralité des dispositions du présent article n'est censée restreinte par aucune loi spéciale."

L'ancienne compagnie de chemin de fer a reçu $131,000 pour des services à rendre au public: opérer sa ligne. Même si les dispositions auxquelles il est référé ne seraient pas formelles, elles devraient être comprises et interprétées dans un sens où elles ont quelqu'effet plutôt que dans un sens où elles n'en ont pas.

L'argent du public n'a pas été versé à seule fin de construire et de maintenir la ligne du chemin de fer en bon état, mais aussi pour qu'elle soit exploitée—il ne saurait en être autrement—et si on réfère aux contrats exigés en vertu du Statut précité, nous y trouvons les clauses suivantes:—

(*e*) "La dite compagnie sera tenue après que les travaux auront été terminés sur sa ligne subventionnée comme ci-dessus prescrit, de la tenir constamment en bon état et en bonne condition ainsi que le matériel roulant requis pour la circulation régulière des trains conformément aux besoins du trafic et du public voyageur; et elle s'engage aussi à exploiter sa ligne de chemin de fer sans interruption et de remplir fidèlement ses obligations subordonnément à toutes charges et responsabilités légales."

(*f*) "Le subside en terre mentionné ci-dessus sera accordé ou concédé de la manière ci-dessus prescrite, aux seules conditions que pourra déterminer le Lieutenant-Gouverneur en conseil pour garantir le droit de circulation et les arrangements relatifs au trafic, de même que tous les autres droits ayant en vue de procurer à la dite compagnie partie de seconde part, ou ses ayants droit, toutes les accommodations et facilités possibles et des tarifs uniformes de circulation avec ou sur tous les autres chemins de fer se raccordant avec la ligne appartenant à la compagnie partie de seconde part."

(*g*) "Il est aussi convenu que la dite ligne de chemin de fer et les ouvrages qui en dépendent, de même que tous les droits, privilèges, exemptions, biens meubles et immeubles de tout genre que ce soit, appar-

tenant à la dite compagnie partie de seconde part, seront, après que ladite ligne et les travaux qui s'y rapportent auront été parachevés, jugés la propriété de la dite compagnie, subordonnément aux charges et obligations ci-dessus spécifiées et qui deviendraient applicables si l'occasion s'en présentait."

Avec tout le respect voulu pour l'opinion de mes collègues, telle qu'exprimée dans leur jugement, je crois que la compagnie des chemins de fer Nationaux ne pouvait légalement discontinuer l'exploitation de sa ligne en 1931 à moins d'être autorisée par la Commission.

La Commission ayant juridiction pour juger de la requête, est-il dans l'intérêt du public qu'elle soit accordée?

L'avocat de la compagnie du chemin de fer a produit des états montrant les recettes provenant de Deschaillons depuis 1932 à 1935 inclusivement (Voir Exhibit N° 1). Ces recettes qui, en 1932, s'élevaient à la somme de $2,555.55 n'ont été en 1935, que de $1,399.15. M. Rand a admis que les recettes de Deschaillons se sont élevées en 1930 à la somme de $17,000. (Preuve, p. 115).

Quelles étaient les recettes avant 1930? Nous ne le savons pas, mais nous pouvons présumer, en toute sûreté, qu'elles étaient plus élevées, parce qu'en 1930 la dépression se faisait déjà sentir sérieusement.

La compagnie des chemins de fer Nationaux ayant abandonné une partie de sa ligne en 1931, les revenus ont baissé à la somme de $2,555.55 en 1932. En 1935, les recettes ne furent que de $1,399.15, soit une diminution de 40 p. 100 sur l'année 1932, alors que les conditions économiques s'étaient beaucoup améliorées dans tout le pays, et que de nouvelles industries avaient été établies à Deschaillons: une diminution de 1,000 p. 100 sur 1930 avant l'abandon de la ligne. Pourquoi cette perte énorme sur 1930?

La dépression est responsable pour un faible pourcentage de cette perte, l'abandon de la ligne pour la plus grande partie, et le genre de service qu'on y a donné pour la balance.

J'ai dit que la dépression était responsable pour un faible pourcentage de la diminution de 1,000 p. 100 dans les revenus du chemin de fer depuis 1930. La population est la même et il y a plus d'industries que jamais. Des centaines de milliers de dollars ont été dépensés dans une seule briqueterie.

Le trafic existe mais il est abandonné volontairement aux autres compagnies de transport par la compagnie du chemin de fer.

En 1930, les autres compagnies de transport étaient en opération, de même que la compagnie du chemin de fer.

L'abandon de la ligne a été le principal facteur d'une telle perte. En 1930, les recettes s'élevaient à la somme de $17,100, et en 1932 (la station a été abandonnée en août 1931) elles ne se chiffraient qu'à $2,555.55; finalement elles ont baissé à $1,399.15 en 1935 alors que le commerce en général était 50 p. 100 plus considérable qu'en 1932.

Ces chiffres établissent les résultats de l'abandon de cette ligne. Quant au genre de service donné, je citerai les déclarations de l'Honorable M. Francœur: (Preuve, pages 126 à 129):—

> "Autrefois, jusqu'à il y a quelques années, les chemins de fer retiraient des bénéfices. On dit aujourd'hui que c'est la concurrence entre la route et le rail—"the rail". Si les chemins de fer subissent aujourd'hui cette concurrence c'est un peu de leur faute parce qu'ils n'ont pas prévu qu'avec les nouvelles constructions de chemins cette concurrence se produirait infailliblement. Si les chemins de fer avaient prévu dans notre pays, comme on l'a fait en Europe, par exemple, ce qui devait arriver, ils

auraient pris les mesures de donner au public, à côté de leurs chemins de fer, les services que le public pouvait désirer et ils auraient retiré ces bénéfices-là. Au lieu d'avoir cette concurrence contre eux, ils feraient eux-mêmes cette concurrence de la route . . ."

"On se base aussi sur le trafic qui a eu lieu au cours des dernières années. Evidemment, on ne peut pas se baser sur ce trafic-là. La compagnie a supprimé le service jusqu'à Deschaillons et on a même supprimé des trains. Aujourd'hui, on tend encore à réduire le service sous prétexte que les recettes ne rencontrent pas les dépenses. Nous avons protesté contre l'abandon des trains jusqu'à Deschaillons et aussi contre l'abandon de certains trains."

"Mais si on voulait augmenter l'utilité de ce chemin de fer pour le public, l'accommodation de ce service et de se rendre à Québec au lieu d'aller à Lévis, le trafic augmenterait et le chemin de fer aurait des recettes plus considérables.

Il n'y a pas rien que les industriels et les marchands à Deschaillons et dans les environs. Il y a surtout la classe agricole. Les cultivateurs qui vendent du foin et d'autres produits; ils viennent à Québec vendre leurs produits toutes les semaines. Mais il leur faut d'abord se rendre à Parisville ou à Fortierville pour prendre le train. Ensuite, au lieu de débarquer à Québec ils arrivent à Lévis et ils sont obligés de traverser le fleuve pour arriver à Québec à la Basse-Ville."

M. Garceau, C.R.— Est-ce que le fret de l'Intercolonial ne traverse pas à Québec sur le pont?

M. Francœur: Pas du tout. Et alors, ils arrivent à Québec à la Basse-Ville tandis que si ce service se servait du pont de Québec pour arriver en ville, les cultivateurs débarqueraient leurs produits à la gare du Palais, tout près du marché St-Roch. Au lieu de prendre la route naturelle pour venir à Québec, les trains de cette compagnie du Lotbinière & Megantic passent en face du pont et se rendent à Lévis. Il ne se fait pas d'affaires à Lévis. Lévis n'est pas le centre où tous les gens de cette région-là viennent faire leurs affaires . . ."

M. Francœur: C'est un de passagers qui transporte en même temps des wagons de marchandises. C'est ce qu'on appelle un train mixte et les agriculteurs qui transportent leurs produits ont leurs produits avec eux. Par conséquent, avec ce service, il n'est pas surprenant que le chemin de fer n'ait pas de meilleurs résultats.

En plus, les voyageurs de Deschaillons et des autres paroisses voisines qui veulent prendre le train, sont contraints de se lever vers cinq heures pour aller prendre le train à Parisville vers sept heures; c'est une heure pratiquement impossible. Pour retourner, c'est la même chose; le train part de Lévis à six heures moins dix et n'est rendu à Parisville que vers dix heures du soir. Ce qui veut dire que ceux qui sont obligés de se rendre en voiture de Parisville chez eux à dix ou douze milles, arrivent un peu tard . . .

En Europe, on a des routes à côté des chemins de fer comme ici, mais les compagnies de chemin de fer, en France comme en Angleterre, ont établi des systèmes de transport sur leurs rails comme sur la route pour donner de l'accommodation au public et pour éviter toute concurrence de la part de compagnies privées. Par conséquent, ce sont les chemins de fer eux-mêmes qui donnent satisfaction au public et, de cette façon, ces services sont maintenus et toute concurrence est évitée.

Mais ici, au lieu de donner de l'accommodation au public, on s'ingénie à diminuer toute facilité. Je crois que ce sont les considérations que MM. les Commissaires doivent examiner et qu'ils doivent en tenir compte. . ."

La preuve entendue aux diverses séances de la Commission dans Québec, les plaintes reçues, corroborent les remarques faites par M. Francœur au sujet du service donné par le chemin de fer sur ses voies secondaires ou d'embranchements dans la partie centrale de l'est de la province, au sud du fleuve St-Laurent où il a le monopole ferroviaire.

La densité de la population en proportion du nombre de milles de voies ferrées est un critérium des possibilités du trafic des voyageurs, des marchandises à chargement incomplet et des messageries, et dans une proportion moindre, du trafic des marchandises à chargement complet.

Le rapport de 1932 de la Commission Royale sur les transports, connu sous le nom de Rapport Duff, corrobore cette assertion.

Ce rapport dit à la page 39:—

> Parmi tous les pays du monde, le Canada a la plus faible population par mille de voie ferrée. Aux Etats-Unis, la population par mille de voie ferrée est plus que le double de celle du Dominion.

A la même page, le rapport établit que pour tout le Dominion, la proportion est de 236 personnes par mille, et elle serait pour les Etats-Unis d'Amérique d'au delà de 472 personnes.

Le *Star* de Montréal a publié sous le pseudonyme de " Justitia " que 497 personnes par mille de voie ferrée constitue la proportion aux Etats-Unis.

La proportion pour la province de Québec est de 559·1 personnes (voir page 39 du rapport).

Si cette province était considérée comme entité, elle aurait 63 personnes de plus par mille de voie ferrée que les Etats-Unis, ou 12⅓ pour cent; 251 de plus qu'Ontario, ou 80 pour cent, Ontario ayant 302·9 personnes; 407 de plus que le Manitoba, ou 270 pour cent, le Manitoba ayant 151·0 personnes; 451 de plus que la Saskatchewan, ou au delà de 400 pour cent, la Saskatchewan ayant 108 personnes; 442 de plus que l'Alberta, ou 380 pour cent, l'Alberta ayant 117·7 personnes.

Ces chiffres établissent qu'il n'existe pas dans la province de Québec un excès de voies ferroviaires en proportion avec la population; en conséquence, les possibilités du trafic des voyageurs, des marchandises à chargement incomplet et des messageries y sont plus grandes que dans toute autre province.

Si la province de Québec comme unité a un si faible nombre de milles de voies ferrées comparé non seulement aux autres provinces mais aussi avec les Etats-Unis, considérons la partie de la province où le C.N.R. a le monopole ferroviaire et voyons s'il est justifié d'abandonner toute partie de son réseau et d'y donner le service actuel.

Si nous étudions la mappe ferroviaire du Dominion, nous y voyons d'abord que mes assertions précitées y sont corroborées pour ce qui concerne le nombre de milles de voies ferrées dans chaque province, et de plus que Montréal, Sherbrooke, Québec, peuvent être considérées comme les sommets d'un triangle dans lequel sont compris les comtés de Chambly, Verchères, Richelieu, Yamaska, Nicolet, Lotbinière, Lévis, Rouville, St-Hyacinthe, Bagot, Drummond, Arthabaska, Shefford, Richmond et Sherbrooke.

La carte indiquera aussi que la compagnie des chemins de fer Nationaux du Canada est la seule compagnie de transport ferroviaire dans cette région à l'exception des embranchements du C.P.R., de Drummondville à la Jonction Fraser et de St-Guillaume à Farnham, et, en dehors du triangle, à l'ouest de la cité de Sherbrooke, les lignes du C.P.R. et du Québec Central.

Le recensement de 1931 donne à ces comtés, si nous excluons le comté de Sherbrooke, une population de 363,776 habitants, et en comptant Sherbrooke, une population de 401,162 habitants.

Le nombre de milles de voies ferrées des chemins de fer Nationaux du Canada est le suivant: De Montréal via Sorel à Victoriaville, 128 milles; de Montréal à Charny via Drummondville, 168·6 milles; de St-Hyacinthe à Lévis via Richmond, 144 milles; de Richmond à Sherbrooke, 24·6 milles; de St-Léonard à Nicolet, 14·7 milles; de Parisville à Villeroy, 14 milles; de Bellevue Jonction à St. Hyacinthe, 30·1 milles, soit un total de 524 milles.

La proportion de la population par rapport au nombre de milles de voies ferrées du C.N.R. serait de 764 personnes pour chaque mille de voie ferrée. Si nous comptons les 80 milles de voie ferrée du C.P.R., cette proportion serait de 664 personnes, mais ce dernier parcours ne devrait pas être compté, parce que les deux embranchements du C.P.R. croisent les voies du C.N.R., l'un à Drummondville et Acton Vale, et l'autre à Ste-Rosalie et Abbotsford, et servent de lignes alimentaires aux voies du C.N.R., pour le transport des voyageurs.

Quant aux voies du Québec Central et du C.P.R., de Sherbrooke elles se dirigent à l'est du triangle et desservent la section plus à l'est de la province.

Une étude de plus près de la mappe indique que les lignes du C.N.R. vont en sens parallèle dans la direction nord-est; il n'existait que quatre embranchements qui reliaient ces lignes principales plutôt éloignées les unes des autres, savoir: de la Jonction Bellevue à St-Hyacinthe; de Nicolet à St-Léonard; de Doucet's Landing à Victoriaville; de Deschaillons à Villeroy; (la mappe montre une situation différente quant au croisement des lignes de chemin de fer dans les provinces de l'Ouest).

Les chemins de fer Nationaux ont demandé l'autorisation d'abandonner ces lignes d'embranchement; ils ont réussi dans le cas de la requête concernant l'embranchement Nicolet-St-Léonard; ils ont abandonné la partie de leur ligne Deschaillons-Villeroy qui s'étend de Deschaillons à Parisville, la ligne qui s'étend de St-Grégoire à Fortierville, celle de St-Hyacinthe à Iberville. Je n'ai pas mentionné auparavant deux derniers embranchements: ils apparaissent sur la carte produite au dossier.

Ces diverses requêtes indiquent bien la politique des chemins de fer; retranchement de services, abandon de lignes dans une des parties les plus peuplées du Dominion où ils ont le monopole ferroviaire et où en hiver ils n'ont pas de concurrence de la part d'aucun autre moyen de transport.

Les chemins de fer auraient réduit le nombre de milles de leurs voies ferrées à 449 milles, ou aux alentours de 900 personnes pour chaque mille de voie ferrée, ou à 735 personnes si nous comptons les embranchements du C.P.R. mentionnés ci-dessus.

Ce territoire n'est pas isolé mais touche à Montréal avec sa population de près d'un million; à la cité de Sherbrooke avec 29,000 de population; à Québec avec 130,000 âmes. Il comprend plusieurs villes et cités industrielles qui sont prospères, telles que Sorel, un port de mer, St-Hyacinthe, Granby, Drummondville, Richmond, Bromptonville, Windsor Mills, Nicolet, Victoriaville, Acton Vale, et une foule d'autres centres importants.

La plus grande partie de ce territoire est très fertile; la culture mixte, l'élevage des porcs et des bestiaux, l'industrie laitière y sont actifs et les possibilités de trafic pour les chemins de fer y sont aussi grandes qu'en aucun autre endroit en Canada attendu qu'en hiver il n'existe pas de concurrence par voie publique dans la plus grande partie de ce territoire.

La mappe ferroviaire d'il y a 35 ans est à peu près la même qu'aujourd'hui sauf que la ligne de Sorel à Doucet's Landing a été construite en 1908; mais la population s'est accrue de 257,760 à 401,162 habitants, les villes et cités mentionnées ci-dessus ont progressé et l'industrie s'est développée considérablement.

Ces chiffres établissent (*a*) que les centaines de millions qui ont été dépensés pour construire le nombre excessif de milles de voies ferrées furent dépensés ailleurs; (*b*) que si les chemins de fer pouvaient alors être exploités

avec moins de trafic possible, ils peuvent maintenant le faire avec plus de profit s'ils voulaient donner un service aussi convenable qu'autrefois.

On pourrait croire que ces faits et commentaires sont étrangers à la présente requête; mais ils ne le sont pas. Ils démontrent l'erreur de la politique de retranchement que les chemins de fer ont adoptée à l'égard de cette section de Québec où existent tous les éléments pour une exploitation avantageuse, politique qui a été la cause de déficits comme l'indiquent les pièces versées aux dossiers Nicolet–St-Léonard (No. 39310.9); St-Hyacinthe–Bellevue (No. 39310.10); Victoriaville–St-Grégoire (No. 39310) et de celle qui nous occupe.

Je demanderais aux chemins de fer de prendre connaissance des plaintes que renferment ces dossiers, de leurs propres aveux, particulièrement en ce qui concerne le service entre St-Hyacinthe et Sorel, St-Hyacinthe et Montréal, aux fins de semaine ou à l'occasion des excursions à prix réduits, et de considérer si ces opérations ne furent pas de nature à indisposer le public voyageur et le forcer à avoir recours à d'autres moyens de transport chaque fois qu'il en était possible.

Dans cette même partie du pays, le C.P.R. exploite deux embranchements; la Commission n'a reçu aucune plainte à leur sujet, et bien que ces embranchements desservent un territoire dont les possibilités de trafic sont moins grandes que dans le cas des embranchements du C.N.R. dont l'abandon a été demandé, un service de trains quotidiens a été maintenu à des heures convenables, tandis que le C.N.R., de Sorel à St-Hyacinthe, n'a pourvu qu'à un service de trains trois fois par semaine, lequel souvent ne tient pas compte de l'horaire établi.

Les cultivateurs desservis par la ligne qui s'étend de la Jonction de Bellevue à St-Hyacinthe ont entrepris depuis la dépression d'accroître leurs productions de pommes de terre; des entrepôts ont été construits à St-Jude. On a établi en 1931 un bas tarif de 7c. les 100 livres, et ce tarif " n'a pas été renouvelé en 1935 à cause du volume très restreint du trafic reçu par les chemins de fer dans la province de Québec à ces taux, *et spécialement en vue du fait que nous avons constaté qu'à cause de la fermeture des routes et de la basse température dans la province de Québec durant l'hiver, on a profité de ces taux pour expédier les pommes de terre par chemin de fer, tandis que très peu d'expéditions, s'il y en a eu, furent faites durant l'été.* En vue de ce fait, on a décidé de discontinuer la mise en force des tarifs de concurrence à l'encontre des camions *dans la province de Québec cette année.*" (Lettre du 4 avril 1936 de M. R.-W. Long, gérant général du trafic.)

La déclaration ci-dessus n'a pas besoin de commentaires, mais elle fait voir la politique des chemins de fer, les raisons de leur insuccès, c'est-à-dire l'abolition de tarifs qui apportaient du trafic aux chemins de fer et comme résultat l'augmentation des voituriers sur voie publique.

Le rapport des opérations du C.N.R. durant l'année de 1935, à la page 14, dit:

> "Il devient de plus en plus certain que toute amélioration substantielle dans les recettes nettes ne peut être assurée d'aucune autre manière que par l'augmentation du volume du trafic, et, de l'avis des régisseurs du chemin de fer, *il est dans l'intérêt public* que le remède à apporter aux difficultés actuelles consiste à augmenter les recettes plutôt qu'à réduire les dépenses d'exploitation des chemins de fer. La dernière attitude en est une négative."

Cette déclaration est la condamnation de la politique poursuivie au cours de ces dernières années; des requêtes mentionnées ci-dessus et du refus d'accorder la présente requête.

C'est la corroboration des commentaires de M. Francoeur et des assertions précitées.

Mais si les chemins de fer admettent la nécessité d'augmenter le volume du trafic, ils ne veulent pas encore prendre les mesures nécessaires pour assurer cette augmentation.

Le rapport, à la page 15, dit:

> "Evidemment, l'important besoin pour les chemins de fer consiste en un retour à quelque chose comme un volume moyen de trafic. Il n'y a aucun doute que les leçons qui ont été apprises comme conséquence de la dépression ont été telles qu'une amélioration substantielle dans les recettes nettes sera obtenue à même un montant déterminé de revenus bruts *pourvu que les tarifs des marchandises et des voyageurs, les tarifs du pays et les prix des matériaux restent à peu près aux mêmes niveaux qu'auparavant.*"

Alors, comment les chemins de fer peuvent-ils s'attendre à reprendre le trafic qu'ils ont perdu en faveur d'autres voituriers s'ils n'abaissent pas leurs tarifs? Ou, comptent-ils encore seulement sur les exportations du grain? Ignorent-ils les changements de conditions quant aux possibilités de tel trafic?

Leur malheur dans le passé a été de ne pas évoluer avec les changements de conditions, mais on devrait espérer qu'ils aient appris par leur expérience, par l'enquête faite aux Etats-Unis sur les tarifs de transport de marchandises, et par le jugement rendu par la Commission du Commerce Inter-Etats sur les tarifs des voyageurs.

Leur rapport à la page 3 reconnaît le fait que les excursions à prix réduits ont augmenté les recettes nettes, que l'annonce avec un meilleur équipement de wagons aux Etats-Unis a enlevé des voyageurs aux réseaux canadiens. Pourquoi ne pas tirer de ces expériences les conclusions logiques?

Depuis le rapport de 1935 des chemins de fer Nationaux du Canada, l'Association Canadienne des chemins de fer a annoncé une réduction de 13% dans les tarifs de voyageurs et d'accommodation de wagons-salon; mais le Baltimore and Ohio Railway et les autres chemins de fer aux Etats-Unis vont, le 2 juin prochain, réduire leur présent tarif de 3.6c. par mille à 2c., soit une réduction de 44.4% par suite de l'ordonnance émise par la Commission du Commerce Inter-Etats.

La réduction de 13% en Canada n'est même pas une demi-mesure; elle ne profitera qu'à ceux qui font actuellement usage des chemins de fer. Cette réduction est insuffisante pour rivaliser avec les autres voituriers soit par eau ou par chemins publics.

Ces nouveaux tarifs ne sont pas ceux d'avant-guerre; de plus, le voyageur pouvait alors acheter un livret de 1,000 milles à 2c. du mille, ou des billets dits de commutation pour les longues distances.

Il a fallu aux chemins de fer des années pour se rendre compte des avantages des excursions à prix réduits; ils semblent être encore aveugles quant aux avantages d'une réduction générale des tarifs à 2c. du mille, même quand il est prouvé que cette politique a été profitable ailleurs.

Ils ignorent qu'ils n'ont plus le monopole du transport, surtout en été; qu'ils doivent de nouveau refaire l'éducation du public sur les avantages du transport par rail. Il semble nécessaire de leur rappeler les changements de conditions.

Le public paie le compte de leurs déficits, il a le droit de s'en servir et le plus grand nombre ne peut pas voyager aux prix actuels, mais il le peut à des prix réduits comme le prouvent les excursions qu'encouragent non pas les clients réguliers mais plutôt les personnes qui ne voyageraient pas si ce n'était des taux d'excursion à bon marché. Il en serait de même avec un tarif de 2c. du mille.

Le rapport des experts-enquêteurs soumis au co-ordinateur fédéral, M. Eastman, après une étude de deux ans sur les possibilités de réduire les tarifs des marchandises en vue d'accroître les recettes des chemins de fer, est connu depuis juillet 1935.

Il est dit dans ce rapport que les chemins de fer peuvent devenir le moyen de transport public le *plus rapide et le moins dispendieux* avec un matériel roulant convenable.

Le jugement de la Commission du Commerce Inter-Etats a abaissé le tarif des voyageurs de 3.6c., tel qu'il existe en Canada, à 2c. Ce jugement a été basé non seulement sur le rapport des experts, mais sur deux années d'expérience de la mise en vigueur d'un tel tarif dans les Etats du sud et de l'ouest où il a été le facteur d'une augmentation dans les recettes nettes.

Cette étude établit que ni le rapport Duff ni même "Justitia" du "Star" de Montréal recommanderaient l'abandon de lignes dans des conditions comme celles qui existent dans cette superficie d'environ 8,000 milles carrés; que les chemins de fer ont à leur disposition tous les éléments pour exploiter leurs lignes avec succès; qu'au lieu de prendre avantage de ces éléments en appuyant les efforts de cette population industrieuse pour lui aider à passer la crise et à payer pour les extravagances ferroviaires d'autrefois auxquelles elle n'a pas participé, ils refusent de lui donner le service, les tarifs convenables à cette fin; bien plus, ils punissent les producteurs de pommes de terre pour avoir utilisé les chemins de fer en profitant des tarifs réduits—voir supra-déclaration de M. Long, p. 13.

J'accorderais la requête, et j'ordonnerais aux chemins de fer Nationaux du Canada de remettre en exploitation leur ligne de Deschaillons à Villeroy; si la Commission n'a pas juridiction sur la ligne qui s'étend de Deschaillons à Parisville parce qu'elle a été abandonnée en 1931, j'ordonnerais aux chemins de fer Nationaux au moins de faire circuler leurs trains de Parisville à Québec au lieu de Lévis.

Le 30 avril 1936.

ORDER No. 53070

In the matter of the application of the Municipalities of the Parish of Ste. Emelie, the Village of Leclercville, the Parish of St. Pierre les Becquets, the Parish of Ste. Cecile de Levrard, the Village of Lotbiniere, the Parish of St. Louis de Lotbiniere, the Parish of St. Jacques de Parisville, the Village of Fortierville, the Parish of Ste. Philomene de Fortierville, the Village of Deschaillons, and residents of the said municipalities for an Order requiring the Canadian National Railways to re-establish the train service which formerly existed between Parisville and Deschaillons, in the County of Lotbiniere, Province of Quebec.

File No. 27563.180

SATURDAY, the 9th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon hearing the application at the sittings of the Board held in Quebec. February 5, 1936, in the presence of counsel for and representatives of the

applicants, the Department of Public Works for the province of Quebec, and the Canadian National Railways, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

Application of the Associated Canadian Travellers, Calgary, Alberta, for an Order under Section 345, Subsections (b) and (e), of the Railway Act, directing the Canadian Pacific Railway Company, the Canadian National Railways, and the Canadian Passenger Association to grant to applicant the same right and privilege extended to other Commercial Travellers' Associations in Canada under which said Associations issue commercial travellers' certificates to their qualified members entitling said members to special transportation rates on said Railways.

(File No. 31263.4)

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER:

This is an application by the Associated Canadian Travellers for an order under the provisions of section 345 of the Railway Act, directing the Canadian Pacific Railway Company and the Canadian National Railways and the Canadian Passenger Association to grant the same right and privilege to the applicant which is extended to other commercial travellers' associations in Canada, in respect of the issue of commercial travellers' certificates entitling members to special transportation rates upon the said railways.

The application was heard in Calgary, Alberta, on March 2, 1936, and was adjourned for further hearing at Ottawa. The hearing was concluded at Ottawa on April 21, 1936. The following interests were represented by counsel at the hearing, namely:—

The applicant association;
The Commercial Travellers' Association of Canada;
The Dominion Commercial Travellers' Association;
The Maritime Commercial Travellers' Association;
The North West Commercial Travellers' Association;
The Ontario Commercial Travellers' Association;
The Canadian Pacific Railway Company:
The Canadian National Railways;
The Canadian Passenger Association.

The application was opposed by all of the above named companies and associations, except the applicant.

The applicant association originally applied for incorporation under the name "The Associated Commercial Travellers of Canada," but objection was taken to this name by the Department of the Secretary of State upon the ground that such name would conflict with The Commercial Travellers' Association of Canada which had previously been incorporated by Dominion statute. In the final result the applicant and the Department of the Secretary of State agreed that the corporate name should be "Associated Canadian Travelers" and the applicant association was incorporated under this name by Dominion

Letters Patent on October 20, 1921, and among the objects of incorporation as set out in the Letters Patent were the following:—

" (*a*) To advance and protect the interests of all commercial travellers and in particular to promote the welfare of its members;

" (*b*) To protect the members against harsh or unfair practices in commerce or trade;

" (*c*) To exact fair treatment for its members from all persons with whom they may deal;

" (*d*) To protect its members against the imposition of unjust or unlawful exactions;

" (*h*) To promote a more friendly and extensive intercourse between its members and to improve in all possible ways the relations between commercial travellers and other persons;

" (*i*) To co-operate with the Dominion or any provincial Government or any other Government or any municipal or other corporation, company or society whether incorporated or not, when such co-operation may be calculated either directly or indirectly to assist or promote the welfare or convenience of commercial travellers, and for these purposes to initiate and carry into effect or to assist in initiating and carrying into effect such legislation, by-laws, rules or regulations as may be necessary or expedient in the premises;

" (*m*) To secure from all transportation companies and hotels proper treatment for commercial travellers and so far as possible to secure from such companies and hotels just and equitable favours for commercial travellers and particularly in this connection to further the interests of its members."

The by-laws of the applicant association passed on December 28, 1932, and amended on May 23, 1935, were duly approved by the Department of the Secretary of State for Canada. These by-laws provide among other things as follows:—

" 2. Qualification for Membership.—Any white person of good moral character, having attained the age of eighteen years, who is domiciled in Canada and who is, or has been engaged as a travelling salesman, selling goods at wholesale, or is or has been employed as a travelling representative, is eligible for membership in the Associated Canadian Travelers on complying with the regulations governing the payment of dues and election to membership as hereinafter provided, but this shall not include retail store sales persons, warehousemen, peddlers or house to house canvassers.

" 3. Classification of Membership.—Members in this Association shall be of three classes:—

" (*a*) Active, which shall mean and include travelling salesmen and travelling representatives actively engaged in their occupations.

" (*b*) Associate, which shall mean and include persons who at some time followed the occupation of travelling salesmen or travelling representatives.

" (*c*) Honorary, which shall mean any other desirable persons not included in the above two classes.

" 59. Commercial Certificates.—Commercial certificates shall be issued to those members who qualify as commercial travellers which shall mean primarily and strictly a person travelling for or a travelling member of a wholesale firm, company or corporation, and soliciting

orders for or purchasing merchandise, wholesale only, from samples, catalogues, card price list or description, from dealer or manufacturer for goods which shall subsequently be delivered.

"60. Applicants for commercial traveller's transportation privileges also require the following qualifications:—

"(*a*) Must represent a firm established within the British Empire.
"(*b*) To travel in Canada at least three months in the year.
"(*c*) Must have residence or business connections or office in Canada.

"61. Applicants for such certificates shall fill up such form as may be prescribed by the Dominion Council which must be signed by the applicant and the manager or other duly authorized person of the firm by which he is employed and the same shall be forwarded to the Secretary of the Dominion Council.

"62. The Secretary of the Dominion Council shall have the discretionary power to issue commercial certificates upon receiving an application therefor at once to applicants who in his opinion are qualified to receive the same and if he fully believes that the application would be approved. Where he has reason to doubt such approval the secretary shall not issue the certificates but shall submit the same to the next meeting of the Executive of the Dominion Council. All issued commercial certificates shall be subject to the approval of the Dominion Council.

"63. Certificates issued by the secretary through deception or misrepresentation on the part of the applicants shall be recalled and cancelled. Such certificates as do not meet with the approval of the executive shall also be recalled and cancelled.

"64. In the event of a certificate being lost, the holder thereof shall at once obtain a duplicate from the secretary by filling in an application form for the same, accompanied by a fee of one dollar.

"65. Should a member holding a commercial certificate leave the firm he is travelling for he shall return the certificate to the secretary. If he should enter the employment of another firm during the same year he may obtain a new certificate on making an application for the same on the prescribed form and forwarding the fee of one dollar. Should a member retire from travelling he shall surrender his certificate to the secretary for cancellation.

"66. Commercial certificates are not transferable. If an attempt is made to transfer a certificate or to use it for any purpose other than that for which it is issued or by any other person than the one to whom it is issued it shall be forfeited and immediately cancelled.

"67. Any member who is guilty of abusing or attempting to abuse any transportation privileges of the Association is liable to be suspended from membership.

"68. A member when purchasing transportation must in all cases promptly show his certificate whether requested to do so or not and he must produce it for the inspection of any authorized official of a transportation company from whom this Association may have privileges, when requested to do so.

"69. The Dominion Council shall at its annual meeting, set the cost of a commercial certificate to its members which in its discretion may include a mortuary benefit."

All of the other Commercial Travellers' Associations named above were incorporated many years ago, and all were in existence as corporate bodies for some time prior to the enactment of section 345 of the Railway Act as originally passed in 1903.

Pursuant to the provisions of the Railway Act the Canadian Pacific Railway Company filed a tariff known as Tariff 8-1, which makes provision for the issue of reduced transportation rates to commercial travellers, and the said Tariff 8-1 was concurred in by the Canadian National Railways, the Dominion Atlantic Railway Company, the Kettle Valley Railway Company and the Temiskaming and Northern Ontario Railway Company, and this tariff has continued in force for many years. Under General Rules and Regulations, section 1 of this tariff provides:—

" (*a*) On presentation of certificate for current year by members of the under-mentioned Commercial Travellers' Associations, countersigned by the respective secretaries and signed by the commercial traveller and baggage owner as per paragraph (*a*), one way first class continuous passage tickets will be sold as hereinafter provided to the Commercial Travellers' Association of Canada, the Dominion Commercial Travellers' Association, the Maritime Commercial Travellers' Association, the North West Commercial Travellers' Association and the Ontario Commercial Travellers' Association.

" (*b*) The contract printed on the back of each certificate must be signed with ink by the commercial traveller, also the baggage owner's release, printed below the contract, must be signed with ink by the owner or owners of the samples. If samples are not carried the commercial traveller must write with ink across the baggage owner's release the words ' No samples ' and sign his name. Certificates printed with contract and baggage owner's release, not signed in accordance with the form, must not be honoured, and particulars of such certificates reported to the general passenger agent.

" (*c*) Honorary or associate member's certificate does not entitle the holder to any transportation privileges.

" (*d*) Certificates of membership are not transferable under any circumstances whatever.

" 2. A commercial traveller means primarily and directly a person travelling for, or a travelling member of a wholesale firm, company or corporation, and soliciting orders for or purchasing merchandise, wholesale only, from samples, catalogue, card price list or description from dealer or manufacturer for goods which are subsequently to be delivered. Applications for commercial travellers' transportation privileges which fulfil this definition also require the following qualifications:—

" (*a*) Must represent a firm established within the British Empire;

" (*b*) To travel in Canada at least three months in the year;

" (*c*) Must have residence or business connections or office in Canada."

Since the filing of the said tariff all members of the five Commercial Travellers' Associations named therein who might qualify under the terms of the said tariff, have enjoyed reduced fares when travelling upon the said railways, but members of the applicant association have not hitherto been granted certificates entitling them to such reduction.

The head office of the applicant association is at Calgary, Alberta, and a list of its members was submitted at the hearing in Calgary showing a membership of 995. This list was prepared on October 31, 1935, but it was stated that

the membership had slightly increased since that time and the actual membership when the application was heard in Calgary was 1,025. This total included associate and honorary members. Of the 995 names appearing on the said list Mr. John T. Berrington, Secretary-Treasurer of the applicant association, stated that it included 16 associate members and 34 honorary members. Mr. Berrington also stated that 87·1 per cent of the membership of the Association represented members who are actively engaged in business as commercial travellers and who come definitely within the provisions of Tariff 8-1 above referred to.

Application was made by the applicant association in the year 1932, and again in 1934, to the Canadian Passenger Association for the issue of certificates to entitle those of its members, who are qualified for certificates, to reduced transportation, but the Canadian Passenger Association has declined to recognize members of the applicant association for this purpose.

The application was opposed by the five Commercial Travellers' Associations named upon various grounds, but chiefly upon the ground that there already existed in Canada through the five associations above named adequate facilities for any bona fide commercial traveller to secure membership in one or other of the associations which would entitle him to reduced transportation. They also contended that an increase in the number of Commercial Travellers' Associations in Canada was not desirable, and that the effect of increasing the number might be to weaken or injuriously affect the financial and other interests of existing associations. It was also urged on behalf of these five associations that their membership in the first instance was strictly limited to persons actively engaged in business as commercial travellers, while the constitution of the applicant association was not so limited and permitted persons to become members who were not strictly commercial travellers. But the chief objection of these five associations seemed to arise from a desire not to increase the number of Commercial Travellers' Associations, as an increase would lead to competition among the various associations for membership which in the end might have a prejudicial effect upon the older associations. They also urged that the recognition of another association might have an injurious effect in regard to the trust funds now held by the various associations for payment in mortuary benefits to their members.

A representative of the Canadian Passenger Association strongly opposed the application mainly upon the ground that recognition of the applicant association would in future lead to the organization of other associations of a similar character, which would create a difficult situation in administration, as the Canadian Passenger Association was called upon to exercise great care and very close supervision in the granting of certificates. The recognition of new associations would increase this difficulty to a large extent. The Canadian Passenger Association emphasized the fact that 55 per cent of the membership of the applicant association were already members of one or other of the five associations above named and as such enjoyed the privilege of reduced transportation. Their representative asserted that in his opinion it was doubtful if the remaining 45 per cent of the membership would come within the definition of commercial traveller under Tariff 8-1, giving as a reason for this opinion that these members had never applied for membership in the other associations, and he inferred therefrom that they were unable to qualify as bona fide commercial travellers.

Counsel for the railways supported the position taken by the Canadian Passenger Association and in addition thereto took the ground,

Firstly, that the applicant association is not an organized association of commercial travellers within the meaning of the Act because it is open to persons not engaged in the business of commercial travellers to become members of the association. It was argued very forcibly that if the applicant association were recognized under section 345 (*b*) that practically any association or

club might be organized and make application for reduced transportation, whereas only a very small percentage of the members might happen to be commercial travellers.

Secondly, that section 345, subsection (*b*) of the Railway Act only applies to the five associations in existence at the time the enactment was passed; and

Thirdly, that no discrimination had been shown to exist under the provisions of the Act.

In my opinion the applicant association is in fact an organized association of commercial travellers within the meaning of section 345, subsection (*b*). I consider that one has only to examine the objects of the applicant association as set out in the letters patent and in the by-laws of the association to reach such a conclusion. The definite object of the applicant association is to further and conserve the interests of persons who are actively engaged in business as commercial travellers, and to provide commercial travellers with the services, conveniences and benefits set out in the by-laws. While it is no doubt true that a limited number of members of the association amounting to about 12 or 13 per cent cannot qualify as commercial travellers under the definition of that term as contained in Tariff 8-1 filed by the railway companies, that fact in itself does not alter or affect the real aims and purposes of the association which are essentially in respect of commercial travellers. I cannot accept the view expressed by counsel for the railway companies that section 345 (*b*) is limited in its application to the five commercial travellers' associations which were in existence at the time the section was enacted in 1903. If it was the intention of Parliament to create such a limitation, I think that express words should have been introduced for that purpose. I cannot gather from the language of the section that Parliament intended any such limitation. In my opinion the section applies not only to associations which existed at the time, but also to associations which might be organized in the future. It is only reasonable to suppose that at the time the section was enacted Parliament fully realized that in future years great expansion would take place throughout Canada, both in trade and in population, which might necessitate the organization of a greater number of commercial travellers' associations than those which were in existence in 1903. It has been laid down as a general rule in the construction of statutes that words of limitation are not to be read into a statute, if it can be avoided, and in the absence of any words of limitation in respect of this enactment I must decide that the section applies to associations of commercial travellers which might be organized after the passage of the Act.

I have also come to the conclusion that the applicant association has made out a *prima facie* case of discrimination as against its members under the provisions of sections 314, 316 and 319 of the Railway Act.

The Canadian Passenger Association is the representative and agent of the railways in regard to the granting of commercial travellers' transportation certificates. Application has been made on two occasions, namely in 1932 and 1934, to the Canadian Passenger Association and lists have been submitted containing the names and particulars in respect of members of the applicant association who are entitled to certificates at reduced rates, but these applications have been refused by the Canadian Passenger Association, and at least 45 per cent of the members of the applicant association who are qualified under Tariff 8-1 as commercial travellers have not been accorded the benefit of reduced passenger rates which have been given to members of the five associations above named.

Section 319 places upon the railway companies the burden of proving that the rates in controversy do not amount to an undue preference or an unjust discrimination, and by the judgment of the Supreme Court of Canada in City of Toronto vs. G.T.R. and C.P.R. as reported in 11 C.R.C. p. 365, it was held that section 319 of the Railway Act applied to section 345 (*b*). Counsel for

the railway companies contended that there was no evidence before the Board of any discrimination as a result of the refusal to grant certificates to members of the applicant association. Counsel cited in support of this contention the judgment of the Board in Weganast vs. G.T.R., 8 C.R.C. p. 42. However, in my opinion, in the present application the evidence definitely shows that both undue preference and unjust discrimination have resulted to approximately 450 members of the applicant association through the refusal of the railways to place them on an equal footing with the members of other similar associations. All that is required of the applicant in this respect is to establish a *prima facie* case. In my opinion this has been done, and under Section 319 the burden rests upon the railway company to satisfy the Board that the lower passenger rates or difference in treatment accorded as between members of the applicant and other associations does not amount to undue preference or unjust discrimination. I do not consider that the railway companies have discharged this burden.

I think this application should be granted and the Board should order that the railway companies who have concurred in Tariff 8-1, and the Canadian Passenger Association, should grant transportation certificates to all members of the applicant association who are bona fide commercial travellers under the definition and requirements set out in Tariff 8-1.

May 1, 1936.

Commissioners Stoneman and Stone concurred.

GENERAL ORDER No. 554

In the matter of the application of the Associated Canadian Travellers, of Calgary, Alberta, under Section 345 of the Railway Act, for an Order directing the Canadian Pacific Railway Company, the Canadian National Railways, and the Canadian Passenger Association to grant to the said Associated Canadian Travellers the same right and privilege extended to other commercial travellers' associations in Canada under which said associations issue commercial travellers' certificates to their qualified members entitling the said members to special transportation rates on the said railways.

File No. 31263.4

Friday, the 8th day of May, A.D. 1936.

Hon. Hugh Guthrie, K.C., *Chief Commissioner.*
J. A. Stoneman, *Commissioner.*
G. A. Stone, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, April 21, 1936, in the presence of counsel for and representatives of the Associated Canadian Travellers, the Dominion Commercial Travellers' Association, the Commercial Travellers' Association of Canada, the Ontario Commercial Travellers' Association, the North West Commercial Travellers' Association, the Maritime Commercial Travellers' Association, the Railway Association of Canada, the Canadian National Railways, and the Canadian Pacific Railway Company, and what was alleged,—

It is ordered: That the railway companies subject to the jurisdiction of the Board be, and they are hereby, required to grant the same special transportation rates to the Associated Canadian Travellers, of Calgary, Alberta, as

they extend to other commercial travellers' associations in Canada, in accordance with the definition and requirements set out in Canadian Pacific Railway Tariff C.R.C. No. 1831.

H. GUTHRIE,
Chief Commissioner.

Application of the Brandon, Saskatchewan & Hudson's Bay Railway Company, under Section 165A of the Railway Act, for permission to abandon the operation of its line of railway from the City of Brandon, Province of Manitoba, southerly, to the International Boundary, a distance of 69·50 miles.

File 35629.1

Heard at Winnipeg, Man., March 5, 1936.

JUDGMENT

COMMISSIONER STONEMAN:

This is an application of the Brandon, Saskatchewan and Hudson's Bay Railway Company, hereinafter referred to as the Great Northern Railway, under section 165A of the Railway Act, for the approval of the Board to the abandonment of operation of its line from the city of Brandon, in the province of Manitoba, southerly, to the international boundary, a distance of 69·50 miles.

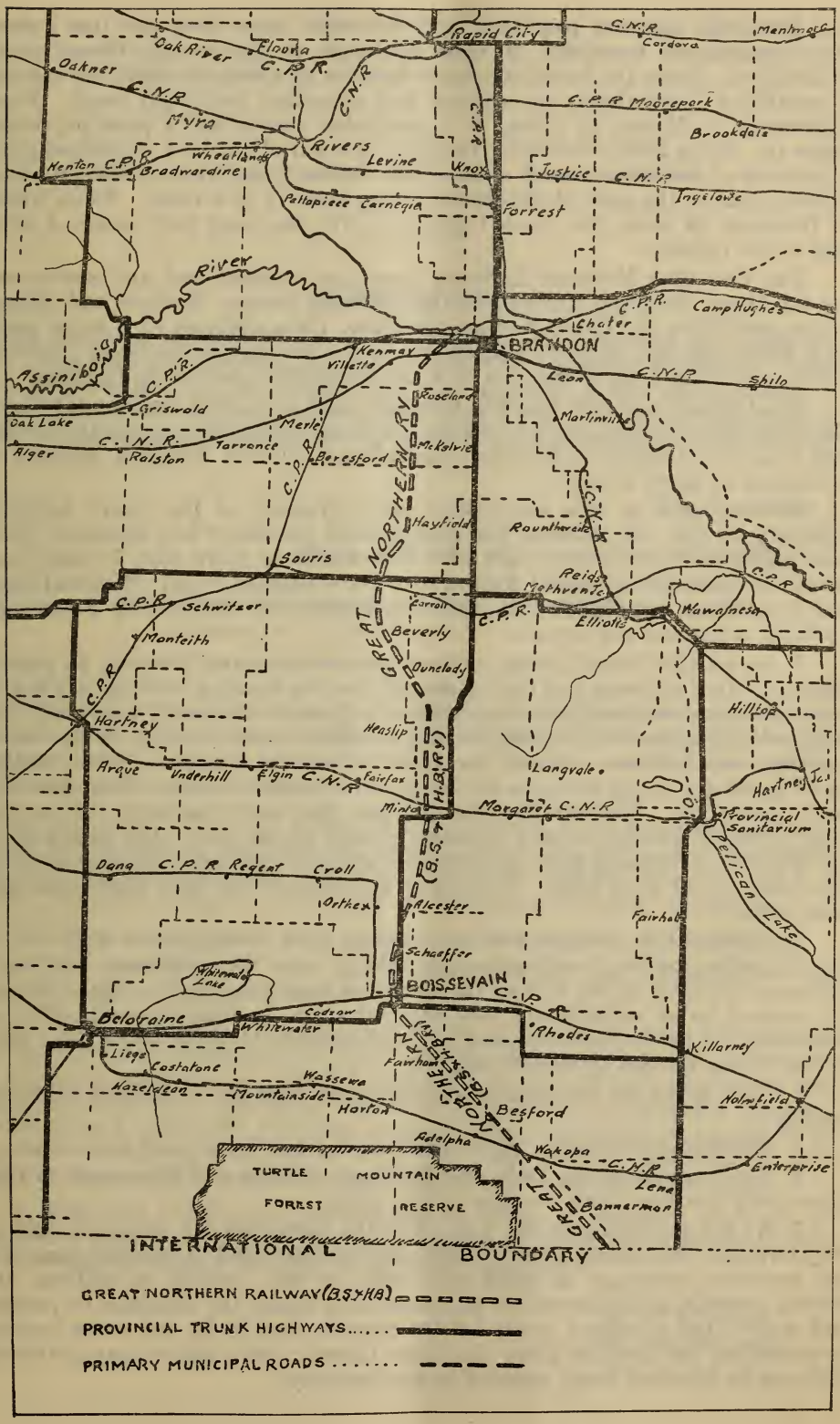
The working time-table, No. 52, Dakota Division, effective February 16, 1936, shows train service as follows: Between Brandon and the international boundary; (Bannerman being the first station north of the boundary). Westward: first class train No. 209, leaves Bannerman 5.11 p.m. daily, except Sunday, arriving Brandon 7.55 p.m., and third class train No. 649 leaves Bannerman 4.45 a.m. Wednesday and Saturday, arriving Brandon 9.10 a.m. Eastward: first class train No. 210 leaves Brandon 7 a.m. daily, except Sunday, arriving Bannerman 9.29 a.m., and third class train No. 650 leaves Brandon 10 a.m. Tuesday and Friday, arriving Bannerman 3.10 p.m.

On the Brandon line the railway operating revenues for the year ending December, 1932, were $31,566.36; for the year ending December 31, 1933, they were $31,619.93; for the year ending December 31, 1934, they were $31,154.88; and for the eleven months ending November 30, 1935, they were $28,006.82.

The railway company's operating expenses for the same period were as follows: For the year ending December 31, 1932, $74,266.23; for the year ending December 31, 1933, $70,054.53; for the year ending December 31, 1934, $70,243.66; and for the eleven months ending November 30, 1935, they were $60,655.73. The loss for this period amounted to $42,699.87 in 1932, $38,434.60 in 1933, $39,088.78 in 1934, and $32,648.91 for the eleven months of 1935.

The above figures establish the fact that there have been substantial losses during the years 1932-35. The evidence submitted by the railway executives is also to the effect that this particular line has never been operated at a profit. The territory served is principally agricultural.

Mr. James Robinson, assistant general freight agent of the Great Northern Railway, gave evidence in detail as to the type of country, the business establishments, as well as the railway facilities at each station on the line. With the exception of Minto, which is a town with a population of approximately 500, Boissevain with a population of 825, and Brandon, the Canadian terminus, there are no towns of any importance. Most of the stations have a grain elevator, three of them have a country store, and two have filling stations. Minto is served by the Canadian National Railway. Boissevain is served by the Canadian Pacific Railway. Brandon is served by both the Canadian National and Canadian Pacific companies.


Rapid City
C.N.R.
Menteith
Cordova
Oak River
Elkhorn
C.P.R.
Oakner
C.N.R.
C.N.R.
C.P.R. Moorepark
Myra
Brookdale
Rivers
Wheatland
Kenton C.P.R.
Bradwardine
Levine
Knox
Justice
C.N.R.
Ingelowe
Pallapiece
Carnegie
Forrest
River
C.P.R.
Camp Hughes
Chater
BRANDON
Kenmay
Villetta
Assiniboine
C.P.R.
Leon
C.N.R.
Shilo
Griswold
Oak Lake
Merle
Martinville
C.N.R.
Alger
Ralston
Tarrance
Rosebank
McAlvie
Beresford
C.P.R.
NORTHERN RY.
Hayfield
Rounthwaite
C.N.R.
Souris
Reids
Mathwen
C.P.R.
C.P.R.
Schwitzer
Carroll
C.P.R.
Elliotts
Wawanesa
Monteith
Beverly
GREAT
Dunelady
C.P.R.
Hartney
Hilltop
Heaslip
Arque
Underhill
Elgin
C.N.R.
Fairfax
H.B.Ry.
Langvale
Hartney Jc.
Minto
Margaret C.N.R.
Provincial Sanitarium
Pelican Lake
Dana
C.P.R.
Regent
Croll
Orthex
Alcester
Fairhaven
Schaeffer
Whitewater Lake
BOISSEVAIN
C.P.R.
Belmont
Cedaw
Whitewater
Rhodes
Killarney
Liege
Costalone
Wassewa
Fairholme
NORTHERN (B.S.&H.B.)
Hazeldean
Mountainside
Horton
Besford
Holmfield
Adelpha
Wakopa
C.N.R.
Enterprise
TURTLE MOUNTAIN FOREST RESERVE
Lena
Bannerman
GREAT
INTERNATIONAL BOUNDARY
GREAT NORTHERN RAILWAY (B.S.&H.B.)
PROVINCIAL TRUNK HIGHWAYS.....
PRIMARY MUNICIPAL ROADS .....

From the map on page 2 it will be noted that after the line crosses the international boundary, it runs northwest to Boissevain, thence north to Brandon. From the boundary, for a distance of about 21 miles, the railway is paralleled fairly closely by primary and secondary municipal roads. From Boissevain to Minto, 13 miles, it is paralleled closely by a principal trunk highway. From Minto to Griffin, 14 miles, it is paralleled by a municipal road, a distance of not more than 2 miles at the farthest, and by a provincial trunk highway line to the east, at distances varying from 1½ to 6 miles. From Griffin to Brandon, 19 miles, the trunk highway is, for the most part, about 4 miles east of the railway.

The Canadian National Railways have lines running east and west crossing the Great Northern Railway at the following points: Wakopa and Minto; a line parelleling the Great Northern Railway for a distance of 8 miles north from Boissevain and about two miles west, and a line east of the Great Northern Railway running from Wawanesa in a northwesterly direction to Brandon.

The Canadian Pacific Railway Company also have lines crossing the Great Northern Railway east and west, at the following points: Boissevain and Griffin, also a line from Souris to Brandon, paralleling the Great Northern Railway at a distance of about 7 miles.

In the event of this application being granted, of the entire territory tributary to this line between the international boundary and Brandon, there would be very little, if any, part of it that would be more than 7 miles from either the Canadian National Railways or the Canadian Pacific Railroad lines, and in addition, the highway, as above described, from Brandon to Boissevain, has both truck and bus service.

I am satisfied from a study of both the evidence and the map on page 2 (showing other railways and the highways) that the farming industry will not be seriously inconvenienced if the application is granted. Indeed I would say that the territory without the Great Northern Railway will continue to be one of the best served from a railway standpoint of any in Canada. Those owning small stores and filling stations will be inconvenienced to some extent, and may suffer some loss. Undoubtedly the McCabe Elevator Company will be the most seriously affected of any industry located on the line. The president of the Elevator Company, however, admits they have had very substantial earnings prior to the year 1929. The loss of the railway has been continuous and substantial.

The statement of counsel at the hearing that arrangements with one of the Canadian railway companies for taking over the applicant company's exchange facilities in the city of Brandon had been practically completed may be referred to as establishing that the industries in Brandon will suffer no inconvenience by the abandonment, but will continue to be served as they have hitherto been by the applicant company.

I would grant the application subject to and upon the conditions following, namely:—

1. Railway operation to cease thirty days from the date of this order.

2. The removal of the rails, ties, buildings, bridges and fences not to take place until one year from the date of this order.

3. At the expiration of the year, if in the meantime the rails and right of way have not been taken over by other interests and used in railway operation, the applicant company to grant said right of way, outside of stations and station grounds, to the owners of adjoining farm lands; the company to prepare and deliver the necessary deeds for the purpose, but to be put to no expense in surveying the land or filing the titles thereto; the right to any materials that can be removed being reserved to the company.

4. That the facilities for interchange of traffic at Brandon shall not be removed or interfered with in any way except to carry out the arrangement with the Canadian company as referred to above.

OTTAWA, May 14, 1936.

The Chief Commissioner and Commissioner Stone concurred.

ORDER No. 53092

In the matter of the application of the Brandon, Saskatchewan and Hudson's Bay Railway Company, hereinafter called the "Applicant Company," under Section 165A of the Railway Act, for approval of the abandonment of operation of its line of railway from the City of Brandon, in the Province of Manitoba, southerly to the International Boundary, a distance of 69·50 miles.

File No. 35629.1

THURSDAY, the 14th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Winnipeg, March 5, 1936, in the presence of counsel for the applicant company, the McCabe Brothers Grain Company, Limited, the Town of Morden, and the Municipality of Stanley, and what was alleged,—

It is ordered: That the abandonment of operation of the applicant company's line of railway from the city of Brandon, in the province of Manitoba, southerly to the international boundary, a distance of 69·50 miles, be, and it is hereby, approved, subject to and upon the conditions following, namely:—

1. Railway operation to cease thirty days from the date of this order.

2. The removal of the rails, ties, buildings, bridges, and fences not to take place until one year from the date of this order.

3. At the expiration of the year, if in the meantime the rails and right of way have not been taken over by other interests and used in railway operation, the applicant company to grant the said right of way, outside of stations and station grounds, to the owners of adjoining farm lands; the applicant company to prepare and deliver the necessary deeds for the purpose, but to be put to no expense in surveying the land or filing the titles thereto; the right to any materials that can be removed being reserved to the applicant company.

4. That the facilities for interchange of traffic at Brandon shall not be removed or interfered with, in any way, except to carry out the arrangement with the Canadian company, as referred to in the judgment.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53063

In the matter of the application of the Canadian Passenger Association for approval of a form of release limiting liability in connection with the transportation of automobiles shipped in freight service on passenger transportation under what is termed the "Passenger With Automobile Plan."

File No. 39866

TUESDAY, the 5th day of May, A.D. 1936.

Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon its appearing that the Canadian National Railways and the Canadian Pacific Railway Company are prepared to carry automobiles shipped in freight service on passenger transportation under what is termed the "Passenger With Automobile Plan" at reduced rates upon the execution of a release limiting liability, and that the conditions of such release are reasonable,—

It is ordered: That the Canadian National Railways and the Canadian Pacific Railway Company be, and they are hereby, authorized to include in their tariffs in connection with the transportation of automobiles shipped in freight service on passenger transportation under what is termed the "Passenger With Automobile Plan," the following form of release limiting liability, namely:—

"In consideration of the ..... Railway Company receiving the automobile described and the trailer, if any, and carrying the same in freight service on a special rate set forth in the tariff, instead of requiring the same to be shipped as freight or express at the regular tariff rates, the owner or shipper hereby expressly agrees that the railway company shall not be liable in respect of or consequent upon the loss of or damage or delay to the said automobile or trailer, if any, and/or parts and/or tools and/or accessories thereof, whether caused by or resulting from the negligence of the railway company, its servants or agents, or otherwise howsoever, for any amount in excess of $100, which sum shall be deemed to be the value of the automobile and trailer, if any, and all parts, tools, and accessories thereof, unless a greater value is declared and extra charge paid at time of shipment, in accordance with the current tariff of the railway company.

"Furthermore, that the railway company shall not be liable to any extent in respect of or consequent upon the loss of or damage or delay to coats, rugs, luggage, or other articles or goods whatsoever in or on an automobile or trailer, whether such loss, damage, or delay is caused by, or results from, the negligence of the railway company, its servants, or agents, or otherwise howsoever."

T. C. NORRIS,
Commissioner.

ORDER No. 53062

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for permission to file on less than statutory notice a revision of rates on paperboard and pulpboard to meet water competition, with an increase in the minimum weight.

File No. 27612.135

WEDNESDAY, the 6th day of May, A.D. 1936.

Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon its appearing that the said rates are necessary, and it is required by shippers that they become effective on May 8, 1936, otherwise the traffic will move by water,—

It is ordered: That the applicants be, and they are hereby, permitted to publish, on one day's notice, effective not earlier than May 8, 1936, a reduction in the rates now published in item 620 of Tariff C.R.C. No. E-2382, with an increase in the minimum weight from 40,000 to 50,000 pounds per car.

T. C. NORRIS,
Commissioner.

ORDER No. 53068

In the matter of supplements to passenger tariffs issued by the Crows Nest Southern Railway Company, effective June 1, 1936, cancelling local fares between stations on the said railway, leaving no fares in effect.

File No. 39874

FRIDAY, the 8th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Whereas the above mentioned supplements provide for the cancellation of passenger fares, rules, and charges, effective June 1, 1936, and state the reason therefor is the abandonment of the line of the Crows Nest Southern Railway Company extending from the international boundary (south of Newgate, B.C.) to and including Fernie, B.C.;

And whereas the said railway company has not obtained the approval of the Board to abandon the said line of railway between the points named, as provided by section 165A of the Railway Act,—

The Board therefore orders: That the following supplements to tariffs filed, to be effective June 1, 1936, in so far as they refer to passenger fares, rules, and charges between points on the Crows Nest Southern Railway in Canada, be, and they are hereby, disallowed, namely:—

Supplement 11 to Great Northern Railway Tariff C.R.C. 1592.
Supplement 1 to Great Northern Railway Tariff C.R.C. 2306.
Supplement 3 to Great Northern Railway Tariff C.R.C. 2335.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53071

In the matter of the application of the Express Traffic Association of Canada, hereinafter called the "Applicant," for permission to file on less than statutory notice a revised tariff on eggs and returned empties in Western Canada. File No. 27612.136

TUESDAY, the 12th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that shippers are anxious to have the said tariff made effective on May 18, 1936, and have agreed to the terms thereof,—

It is ordered: That the applicant be, and it is hereby, permitted to publish a special tariff on eggs, in cases, and on the returned empties, to points in Saskatchewan and Manitoba, to become effective upon three days' notice, but not earlier than May 18, 1936.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53077

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.10

FRIDAY, the 8th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Supplement No. 9 to Tariff C.R.C. No. 3, filed by the Maritime Coal, Railway and Power Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 9 to Tariff C.R.C. No. 3, approved herein, is 42 cents per net ton.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53078

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

FRIDAY, the 8th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 32 to Tariff C.R.C. No. E-4322, filed by the Canadian Pacific Railway Company under section 9 of the

Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 32 to Tariff C.R.C. No. E-4322, approved herein, are as follows:—

Index No. 398a, Peasley, P.Q., same rates as Eastman, P.Q.

	Miles	Cents per 100 pounds
Item 215		9½
Item 217	5	3½
	6 to 10	4
	11 to 30	4½
	31 to 40	5½
	41 to 60	6½
	61 to 70	7½
	71 to 90	8
	91 to 100	9
	101 to 125	9½
	126 to 150	10½

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53079

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

FRIDAY, the 8th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published to Saint John and West Saint John, N.B., in item 475 of Supplement No. 15 to Tariff C.R.C. No. E-4734, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of said Act, on traffic carried under the said Supplement No. 15 to Tariff C.R.C. No. E-4734, approved herein, is 27 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53080

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 8th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 16 of Supplement No. 29 to Tariff C.R.C. No. 906, filed by the Dominion Atlantic Railway Company under section 9 of

the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 29 to Tariff C.R.C. No. 906, approved herein, is 9 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53081

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 8th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 1 to Tariff C.R.C. No. 991, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion of published tolls to be reported as shown below.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of normal rates for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 1 to Tariff C.R.C. No. 991, approved herein, is as follows:—

To	Cents per 100 pounds Published	Normal
Salisbury, N.B.	6.25	7.8
Turtle Creek, N.B.	6.25	7.8
Cape, N.B.	6.25	7.8
Albert, N.B.	6.25	7.8

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53082

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 8th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 995, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 995, approved herein, are as follows:—

Item		Cents per 100 pounds
1	From—	
	Halifax, N.S.	43½
	Yarmouth, N.S.	45
2	Halifax rates in effect prior to July 1, 1927.	
3	From—	
	Halifax, N.S.	34
	Yarmouth, N.S.	36½
4	To—	
	Guelph, Ont.	45½
	Simcoe, Ont.	45
	Toronto, Ont.	40½

One and one-half cents per 100 pounds to be deducted from all normal rates on account of water movement.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53083

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 8th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 998, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion of published tolls to be as shown below.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 998, approved herein, is as follows:—

Item		Cents per 100 pounds Published	Normal
1		11.8	14.8
2	To—		
	Paradise, N.S.	18.8	21.2
	Lawrencetown, N.S.	18.8	21.2
	Middleton, N.S.	18.8	23.6
	Aylesford, N.S.	19.3	22.8
	Berwick, N.S.	19.0	23.8
	Waterville, N.S.	26.1	31.7
	Kentville, N.S.	26.1	31.7
	Wolfville, N.S.	27.8	34.3
	Kingsport, N.S.	28.1	33.8
3		18.4	23.0
4		10.8	13.6
5		18.4	23.0

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53084

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 8th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 1001, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under Tariff C.R.C. No. 1001, approved herein, are as follows:—

To—	Cents per 100 pounds Lake and rail	All rail
Sault Ste. Marie, Ont.	...	54½
Fort William, Ont.	48½	54
Port Arthur, Ont.		
West Fort William, Ont.		

One and one-half cents per 100 pounds to be deducted from the normal rates on account of water movement.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53085

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

FRIDAY, the 8th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in item 25 of Tariff C.R.C. No. 743, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Temiscouata Railway Company's proportion to all stations to be reported at 6 cents per 100 pounds.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried to Canadian Pacific Railway points under the said Tariff C.R.C. No. 743, approved herein, are as follows:—

To	Cents per 100 pounds
Canterbury, N.B.	22
Chipman, N.B.	20½
Fredericton, N.B.	20½
Hartland, N.B.	20½
McAdam, N.B.	22
Norton, N.B.	24½
St. Andrews, N.B.	25
St. George, N.B.	25
Saint John, N.B.	23
St. Stephen, N.B.	23
Woodstock, N.B.	21½

The Temiscouata Railway Company's proportion of normal rates to all points in item **25** to be reported at 7½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53087

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Martime Freight Rates Act; and the Order of the Board No. 53043, dated April 29, 1936.

File No. 34822.12

TUESDAY, the 12th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that the wrong destination was shown in the said order,—

It is ordered: That Order No. 53043, dated April 29, 1936, be, and it is hereby, amended by striking out the word "Amherstburg" under item 545 in section 2 thereof and substituting therefor the word "Barrie."

H. GUTHRIE,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MARCH, 1936

Railway accidents	202,	with 27 persons killed	and 213 injured.
Railway accidents at highway crossings	12,	with 12 persons killed	and 12 injured.
	214	39	225

	Killed	Injured
Passengers	—	38
Employees	20	150
Others	19	37
	39	225

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents	
	New Brunswick
1	Automobile—Drove onto crossing in front of train. Licence N.B. J-6422.
	Quebec
1	Horse-drawn Vehicle—Drove onto crossing in front of train.
	Ontario
2	Automobile—Drove onto crossing in front of train. Licences, Ont. MX-245, M Vandehende, Blenheim, Ont.; Ont. X-2631, C. Zeeland, Brooklin, Ont.
1	Automobile—Driver failed to have auto under control, skidded into engine. Licence Ont. J.M.-913, H. Price, 43 Adeline street, Ottawa.
1	Auto Truck—Ran into side of train on crossing. Licence No. 22041-C, B. Holdsworth, 465 Peel street, Woodstock.
1	Horse-drawn Vehicle—Drove onto crossing in front of train.
1	Pedestrian—Deaf and dumb mental patient, walked into side of train.
	Alberta
1	Auto Truck—Defective brakes on truck. Licence, Alta., BI-624.
	British Columbia
2	Automobile—Drove onto crossing in front of train. Licences, B.C. 67267, B.C. 86-664.
1	Auto Truck—Commercial truck driver, failed to comply with law. Licence B.C. 2013.

Of the twelve accidents at highway crossings, one occurred at a protected crossing and eleven at unprotected crossings. Nine of the accidents occurred during the daylight hours and three at night.

JUN 12 1936

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXVI | Ottawa, June 3, 1936 | No. 6

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Dangerous Practices of Motorists, Drivers of Other Vehicles, and Pedestrians at Protected Crossings

In many cases accidents at highway crossings are due to negligence of those driving automobiles and other vehicles and of pedestrians. This negligence is found both at unprotected and protected crossings.

The Canadian National Railway lines from November 1, 1935, to April 30, 1936, show fifty-three cases where there was danger at protected crossings due to the negligence of those using the crossings.

The Canadian Pacific Railway (Eastern Lines) from October 1, 1935, to March 31, 1936, and (Western Lines) from October 1, 1935, to March 31, 1936, show a total of one hundred and sixty-three cases.

Notwithstanding safety devices and cautionary signals, people take chances and disregard safety. Motor accidents are becoming more frequent. Every sane motorist deplores this.

The Board hopes that the press will give as much publicity as possible to what is covered in the statement, with the hope that it may educate motor drivers and others to be more careful at crossings.

If accidents are to be lessened, the sane motorist must educate the culpably negligent motorists, some of whose actions are recorded in the following lists:—

CANADIAN NATIONAL RAILWAYS

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
1935 Oct. 25.....	2.00 p.m...	First crossing north of Caledonia East Station, Ont.	Ont. 11714-C....	Driver of truck not paying any attention to location of train or sound of whistle, necessitating emergency application and stopping of train to avoid accident.
Nov. 2.....	2.30 p.m...	Tansley, Ont.....	Ont. E-865.....	Auto driver not paying attention to highway signs, necessitating emergency application of brakes.
Nov. 9.....	8.00 a.m...	Second crossing east of St. Philippe Station, Que.	F-36.....	Driver did not stop truck before attempting to go over crossing ahead of train.
Nov. 11.....	8.30 p.m...	St. Charles Baromee St., Joliette, Que.	Que. 86239.....	Auto attempted to drive over crossing ahead of train.
Nov. 12.....	.....	Low Level Bridge, Edmonton, Alta.	Alta. L-246.....	While switchman flagging to let engine come over bridge this car passed him then backed off bridge.

CANADIAN NATIONAL RAILWAYS—*Continued*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Nov. 13.....	19.30 K.....	Public crossing at Ave. T, Saskatoon, Sask.	Sask. 9-745.....	Auto driver evidently failed to notice approaching train, resulting in auto being struck and damaged.
Nov. 14.....	20.50 K.....	95th Ave., Edmonton, Alta.	Alta. 38-694.....	Auto ran into and broke crossing gates.
Nov. 14.....	7.40 p.m...	Atwater Ave., Canal Bk., Montreal, Que.	Que. 54801.....	Auto failed to stop on flagman's signal,almost striking flagman, and nearly being struck by train.
Nov. 21.....	6.15 p.m...	Davenport Road, Bathurst Station, Ont.	Ont. 68991-C....	Truck approached railway crossing not under proper control on wet pavement.
Nov. 25.....	5.47 p.m...	Sherbrooke St., Peterboro Ont.	Ont. HO-283...	Auto ran into lowered gates breaking both and gate lamp.
Nov. 27.....	8.13 a.m...	Bronson Ave., Ottawa, Ont.	Ont. Y-2356.....	Auto ran into lowered gates, breaking north gate right off.
Nov. 27.....	.....	Atwater Ave., Montreal, Que.	Que. 21283.....	Disregarded flagman's signal and was almost struck by train.
Nov. 29.....	9.45 p.m...	Royce Ave., Bathurst Station, Ont.	Ont. M-9166....	Approached crossing at excessive speed. Damaged rod holding crossing light.
Nov. 30.....	8.45 p.m...	Walker Road, Walkerville, Ont.	Ont. 27551-C....	Truck skidded on icy road. Unable to avoid striking gate.
Nov. 30.....	6.35 p.m...	Mill St., Saint John, N.B.	N.B. J-4909.....	Auto struck and broke gate on south side of station. Driver stated did not see gate until he struck it. Proper signals had been given.
Dec. 2.....	7.30 p.m...	King St., Sherbrooke, Que.	Que. 62755.....	Backed auto into gate breaking casting on right side.
Dec. 2.....	.....	John St., Weston, Ont....	Ont. 17239-C....	Gates had been lowered 2 minutes. Auto ran through them as train approaching.
Dec. 6.....	8.44 a.m...	Atwater Ave., Montreal, Que.	Que. 17930.....	Driver disregarded flagman's signal. Auto almost struck by approaching engine.
Dec. 7.....	6.40 p.m...	Essa St., Allandale, Ont. Ont.	Ont. EP-264....	Gates lowered, but auto crashed into and damaged gates.
Dec. 7.....	10.10 p.m...	King St., Sherbrooke, Que.	Que. 1509.....	Auto driver did not see gate down until too late, breaking two boards on west side. Road slippery.
Dec. 9.....	17.50 K.....	24th St., Saskatoon, Sask.	Sask. T-371.....	Truck struck rear end of Train No. 5. Driver apparently thought train had passed, but steam from train made it hard to see.
Dec. 11.....	7.31 a.m...	Atwater Ave., Montreal, Que.	Que. H-7062.....	Auto disregarded flagman's signal and crossed at excessive speed in front of approaching train.
Dec. 12.....	4.55 p.m...	Cadillac St., Montreal, Que.	Que. 54516.....	Auto driver failed to stop; struck by approaching train. Whistle sounded.
Dec. 14.....	6.30 p.m...	Mill St., Saint John, N.B.	J-5403.....	Auto ran into gate breaking same. Car skidded on wet pavement.
Dec. 23.....	8.00 p.m...	Cannon St., Hamilton, Ont.	Ont. MP-70.....	Auto approached at excessive speed and nearly ran down flagman protecting crossing.
Dec. 24.....	18.30 K.....	Public Crossing, M.P. 51·54, Drumheller Subdivision, Calgary, Alta.	Alta. 40003.....	Driver of auto failed to make sure crossing was clear before driving onto same.
Dec. 30.....	6.00 p.m...	Bronson Ave., Ottawa, Ont.	Ont. 49085-C....	Ran into south gate breaking same. Approached crossing at 30 miles an hour.
Dec. 31.....	11.40.....	Sixth St., Brandon, Man.	.....	Horse drawn vehicle. Ignored stop signal when train almost at crossing.

CANADIAN NATIONAL RAILWAYS—*Continued*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
1936 Jan. 3.....	11.30 p.m...	1st public crossing south of Pine Orchard, Ont.	Ont. 45635-C....	Truck driver apparently failed to see train on crossing. Collided with ninth car from front end of train.
Jan. 6.....	12.58 p.m...	Broadway St., Wyoming, Ont.	Ont. AB-662....	Auto standing too close to gate, then suddenly jumped forward striking gate which was down.
Jan. 21.....	11.30 p.m...	Mill St., Saint John, N.B.	.....	Auto ran into gates as they started up breaking same. Driver did not stop.
Feb. 1.....	6.40 a.m...	St. Jean Baptiste St., Jonquiere, Que.	.....	Attempted to drive tractor over crossing ahead of train.
Feb. 7.....	3.40 p.m...	Strachan Ave., Bathurst Stn., Ont.	Ont. 10770-C....	Approached crossing at excessive speed and failed to observe signals.
Feb. 7.....	9.45.....	Provincial Highway No.31 east of Morrisburg, Ont.	Ont. MA-639....	Ran into crossing gate.
Feb. 7.....	3.55 p.m...	Davenport Road, Bathurst Stn., Ont.	Ont. 8015-C.....	Truck approached crossing at excessive speed and failed to observe signals.
Feb. 9.....	10.45.....	East Main St., Welland, Ont.	Ont. BF-836....	Auto ran through lowered crossing gates. Driving too fast.
Feb. 13.....	.....	96th St., Edmonton, Alta.	Alta. C-6117....	Truck struck engine tender.
Feb. 25.....	2.10 K.....	1st St. West, Calgary, Alta.	Alta. D-524.....	Truck driver failed to make sure crossing clear before driving on to same.
Mar. 2.....	8.20 p.m...	Bronson Ave., Ottawa, Ont.	Ont. GE-336....	Auto ran into gates, damaging same. Brakes did not hold on icy pavement.
Mar. 4.....	11.00 p.m...	Front St., Orillia, Ont.....	Ont. Y-219.....	Auto approached at about 35 m.p.h. and ran through gates, which had been lowered before auto was in sight.
Mar. 9.....	9.00 a.m...	Royce Ave., Bathurst Stn, Ont.	Ont. 64653-C....	Approached crossing at excessive speed and crashed through lowered gates.
Mar. 11.....	9.45 p.m...	Queen St., Chatham, Ont.	Ont. U-9126.....	Auto broke gates in four pieces and lantern. Not in sight when gates were lowered.
Mar. 13.....	9.55 p.m...	Wentworth St., Hamilton, Ont.	Ont. M-9885.....	Approached crossing at excessive speed and auto not under control. Broke gate.
Mar. 19.....	7.40 p.m...	Lutz St., Moncton, N.B...	N.B. M-1355....	Auto ran into gates, breaking off about 10 feet.
Mar. 20.....	.....	118th Ave., Edmonton, Alta.	Alta. 31-221.....	Auto ran into closed gates, damaging same. Driver claimed brakes failed to hold.
Mar. 24.....	7.00 p.m...	Jackson St. and Ferguson Avenue, Hamilton, Ont.	Ont. C-19555....	When train approaching Jackson St. on Ferguson Ave., truck going west turned south on to Ferguson Ave. in front of engine.
April 7.....	12.20 K	24th St., Saskatoon, Sask.	Sask. C.V. 28...	Truck driver deliberately disregarded stop signal.
April 7.....	8.40 a.m...	2nd crossing west of Dauphin, Man., roundhouse.	.....	School Van No. 2 on sleighs attempted to cross track as freight train approaching. Horses turned off to right in time to avoid accident.
April 2.....	8.25 a.m...	Highway No. 5, Tansley, Ont.	Ont. L-4453.....	Auto approached crossing at fast speed; skidded 20 feet, then went into ditch to avoid running into train. Whistle and bell sounded for crossing.
April 2.....	5.30 p.m...	1st public crossing just north of Palgrave Station platform, Palgrave, Ont.	Ont. ND-873....	Auto stopped only two inches clear of engine, engineer having to apply emergency brake. Proper signals sounded.
April 22....	9.30 p.m...	Highway No. 11, third crossing north of Gravenhurst, Ont.	Ont. FH-936....	Auto ran into side of train, striking between 7th and 8th cars from rear of 30-car train. Proper whistle signals sounded.
April 25.....	21.52 K.....	Water Ave., Winnipeg, Man.	Man. 22-334.....	Disregarded stop signal while engine approaching crossing.
April 29.....	2.25 p.m...	Dundas Highway No. 5, Tansley, Ont.	Ont. 17298 -C...	Truck collided with caboose. Truck apparently had defective brakes.

CANADIAN PACIFIC RAILWAY (Eastern Lines)

New Brunswick District

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
1935				
Oct. 11.....	1.56 p.m...	Douglas Ave., Saint John.	CJ-303.....	Drove under West gate, causing delay in getting same down. Bell ringing at the time.
Oct. 13.....	9.57 a.m...	Douglas Ave., Saint John.	J-4718.....	Drove under East gate, causing delay in lowering same. Bell was ringing at the time.
Nov. 10.....	2.10 p.m...	Main St., Fairville.....	J-8041.....	Drove under gates as they were being lowered. Warning bell ringing but crossing watchman had to call to party to draw his attention to the gates.
Dec. 19.....	1.22 p.m...	Douglas Ave., Saint John.	J-1334.....	Drove under gate as it was being lowered and almost down, causing delay in getting gates down. Warning bell ringing.
Dec. 21.....	1.00 p.m...	Douglas Ave., Saint John.	M-3334.....	Drove under gates as they were being lowered. Warning bell was ringing.
1936				
Jan. 3.....	2.40 p.m...	Main St., Fairville.....	J-2132.....	Drove under gates as they were being lowered and then stopped clear of the railway.
Jan. 22.....	4.30 p.m...	Main St., Fairville.....	J-5695.....	Drove under gates as they were being lowered.
Jan. 31.....	7.10 p.m...	Main St., Fairville.....	J-7274.....	Drove under gates as they were being lowered.
Jan. 31.....	9.30 p.m...	Main St., Fairville.....	J-872.....	Drove under gates as they were being lowered.
Mar. 20.....	.....	Main St., Fairville.....	J-1137.....	Drove under gates as they were being lowered.
Mar. 28.....	.....	Main St., Fairville.....	J-6617.....	Drove under gates as they were being lowered.

Quebec District

1935				
Oct. 1.....	5.27 a.m...	Crown St., Quebec.....	.....	After crossing gates, both sides, had been lowered for movement of freight train, an automobile running from north to south, failed to stop and broke the northwest gate barrier and continued on, breaking southwest gate barrier. Gateman on duty was unable to take licence number of auto.
Oct. 17.....	10.15 p.m...	Elmhurst Ave., Montreal.	.....	After gates had been lowered, an automobile moving from south to north, failed to stop and the southeast gate barrier was broken. The auto did not stop and the gateman who raised the northeast barrier to prevent it from being damaged was unable to obtain the licence number of the car.
Nov. 11.....	8.50 a.m...	Gouin Blvd., Bordeaux...	Que. 35785.....	Crossing gates had been lowered for train No. 421, which was standing at station, when auto, travelling from south to north, ran through and broke arm of southeast gate. Driver of car stated he had not observed that the gates were lowered.
Nov. 12.....	12.30 a.m...	Crown St., Quebec.....	.....	Crossing gates were lowered for movement of yard engine. Gateman observed an auto running from north to south, travelling at about 40 miles per hour, approach crossing.

CANADIAN PACIFIC RAILWAY (EASTERN LINES)—*Continued*

QUEBEC DISTRICT—*Continued*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
				He realized that car was not going to stop and lifted the north side gate and was in the act of lifting gate on south side when auto moved onto crossing and ran through the south-west gate, breaking the barrier.
Nov. 17.....	11.45 p.m...	Westminster Ave., Montreal West.	Que. 28192.....	Crossing gates had been lowered for train movement when auto, travelling from south to north, approached crossing and failed to stop before front of car moved under south gates and radiator cap and windshield of auto were damaged—no damage to gates.
Nov. 18.....	.....	Bonaventure St., Trois Rivieres.	Que. F-9793.....	Crossing gates were being lowered when auto approached crossing and attempted to pass under descending gates. The iron rod which supports gate barrier came in contact with windshield of auto, breaking the windshield. No damage to gate equipment.
Dec. 15.....	3.00 p.m...	Rockland Ave., Outremont	.....	Crossing gates had been lowered for train movement when auto, travelling from south to north, approached crossing at about 35 miles per hour and struck south gate, breaking the whole arm. The auto turned around Bates Road before licence could be ascertained.
Dec. 25.....	6.37 a.m...	Rockland Ave., Outremont	Que. 45324.....	Crossing gates had been lowered for movement of yard engine when auto, travelling from north to south, failed to stop in time and struck and broke arm of north gate. Warning bell was ringing as auto approached crossing but driver stated he did not notice that gates were down.
Dec. 25.....	.....	St. Valier St., Quebec.....	Que. T-908.....	Gates were in upright position when taxi, proceeding from east to west, swerved on tramways track when approaching crossing, and front of taxi struck and broke casting on gate No. 4.
Dec. 26.....	9.45 p.m...	Gouin Blvd., Bordeaux...	Que. H-21966...	Crossing gates on south side had been lowered and gateman was lowering gates on north side when auto passed under the descending gate barrier and struck the gates on opposite side, breaking the arm of southwest gate.
Dec. 31.....	7.45 p.m...	St. Valier St., Quebec....	Que. 13809.....	Crossing gates had been lowered with exception of gate No. 4 on west side, which was broken, and watchman was on ground. He observed an auto approaching crossing when it was between 500 feet and 600 feet away and immediately gave stop signal with his lantern. The watchman states that the speed of the car was not moderated until it struck and broke gate No. 5 on west side.

CANADIAN PACIFIC RAILWAY (EASTERN LINES)—*Continued*

QUEBEC DISTRICT—*Continued*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
1936 Jan. 15.....	8.20 p.m...	Rockland Ave., Outremont	Que. 43921.....	Crossing gates had been lowered for yard engine when auto travelling from south to north ran through gate on south side breaking arm. Windshield of auto was broken.
Jan. 17.....	5.06 p.m...	St. Valier St., Quebec.....	.....	Crossing gates were being repaired and trackmen were stationed at each side of crossing to protect traffic. Warning bell in tower was rung for movement of train No. 355 and the trackmen on ground signalled traffic to stop. A horse drawn rig with another horse tied at rear of rig with rope approached crossing on east side and was warned by trackman not to pass over crossing ahead of train. The driver disregarded the warning and moved onto crossing. The horse drawing rig and the rig itself cleared the train but the horse which was tied to rear of rig was struck by engine and was cut on right side.
Jan. 19.....	2.08 a.m...	Bonaventure St., Trois Rivieres.	Que. 63938.....	Crossing gates had been lowered for movement of train 88, when auto travelling from north to south ran into and broke the arm of north gate. Fender of auto was damaged.
Feb. 4.....	8.00 p.m...	Beaubien St., Montreal...	Que. 28677.....	Crossing gates had been lowered for movement of train 363 when auto travelling from west to east struck and broke the arm of west gate. Windshield of auto was broken.
Feb. 26.....	5.00 p.m...	Crown St., Quebec.....	Que. F-1528.....	Crossing gates had been lowered for movement of train 355 when auto truck struck and broke arm of northwest gate. Owner of truck stated affair was due to defective brakes. No damage to truck.
Mar. 3.....	2.00 p.m...	Elmhurst Ave., Montreal.	Que. H-10220...	Crossing gates had been lowered for draft train movement into Windsor Street station, when auto travelling from south to north struck southwest gate arm, the tip of which was broken. No damage to auto.
Mar. 14.....	.....	St. Louis St., Farnham...	.....	While gates were down for train 2/41 Clerk Denis who works for Mrs. J. E. Baillargeon (general store) drove up to crossing. Gateman signalled for him to stop, but he drove around end of gates and, fortunately, got by before being struck by the approaching train.
Mar. 19.....	5.12 p.m...	Gouin Blvd., Bordeaux, Montreal.	Que. 21718-T....	Crossing gates were being lowered to protect the movement of train 374 when auto truck travelling from north to south passed under north gate and moved over crossing and struck south gate which was broken.

CANADIAN PACIFIC RAILWAY (EASTERN LINES)—*Continued*

QUEBEC DISTRICT—*Concluded*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
1936 Mar. 31.....	3.55 p.m...	Rockland Ave., Outremont	Que. L-1074.....	Crossing gate on south side was being lowered, when auto truck travelling from south to north approached crossing and failed to stop before coming in contact with arm of gate which was broken. Warning bell was ringing as gate was being lowered. No apparent damage to auto truck.

ONTARIO DISTRICT

1935 Oct. 5.....	7.38 p.m...	Adelaide St., London.....	T-1544.....	Auto turned out and passed car standing at crossing to let passenger train go by, and this auto stopped on north rail of main line and crossing watchman had to ask him to back up clear of crossing.
Nov. 4.....	.....	Front St. and Spadina Ave., Toronto.	NZ-332.....	While all gates were up in normal position, auto travelling south on Spadina Ave. struck motor and skidded into gate stand of No. 3 gate.
Nov. 11.....	7.10 p.m...	Waterloo St., London.....	S-8295.....	Gates lowered and crossing bell ringing. Auto unable to stop and ran into gate arm, breaking same.
Nov. 14.....	.....	Front St. and Spadina Ave., Toronto.	O-1871.....	After all gates lowered for movement of yard engine, auto, travelling west on Front St., ran through middle of north half of gate No. 6, breaking gate arm.
Nov. 16. . .	7.20 p.m..	Waterloo St., London. ...	.....	Gates lowered and crossing bell ringing and automobile going south travelling too fast, unable to stop, striking gate arm and breaking same.
Nov. 30.....	.....	Waterloo St., London.....	R-8979.....	Gates lowered, bell ringing and auto slid 70 feet, striking and breaking south gate arm.
Nov. 30.....	11.45 p.m...	William St., Chatham....	.....	Gates were down and freight train pulling over crossing. Auto going north ran through southeast gate arm, breaking same, turned round and broke southwest gate arm and drove away.
Dec. 1.....	.....	Richmond St., London....	DY-143.....	Auto approached crossing too fast and, unable to stop, struck southeast gate arm, breaking same. Driver stated he could not get his brake to work.
Dec. 4.....	1.15 p.m...	Queen St., Chatham.....	FB-100.....	Automobile travelling north ran into gate arm, breaking same.
Dec. 6.....	.....	Osler Ave., Toronto.....	L-471.....	After gates had been lowered for movement of eastbound freight train, automobile travelling north on Osler Ave., ran into south barrier, breaking points of both gates and coming to a stop about five feet from side of moving train.

CANADIAN PACIFIC RAILWAY (EASTERN LINES)—*Continued*

ONTARIO DISTRICT—*Continued*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
1935				
Dec. 10.....	10.25 p.m...	Dundas St., Cooksville....	C-2899.....	Automobile stopped account wigwags working for approach of passenger train. Large truck following crashed into rear of standing auto, hurling it 104 ft. across east and westbound main lines, truck skidding, breaking wigwag signal and overturning in ditch on opposite side of tracks.
Dec. 12.....	6.20 p.m...	Pall Mall St., London.....	T-1026.....	Gates down for eastbound freight train, crossing bell ringing and auto approached at rapid rate of speed. Driver turned car to avoid striking gate arms and upset auto, badly damaging same.
Dec. 13.....	2.55 p.m...	Queen St., Guelph.....	C-38664.....	Train 649 struck Ford truck, injuring driver and passenger in truck with him. Wigwag signal working, engine bell ringing and whistle sounded for crossing.
Dec. 14.....	3.15 a.m...	Richmond St., London....	T-9586.....	Automobile going north ran into southeast gate arm, breaking same. Gates were down, gate lanterns lit and crossing bell ringing and passenger train right at crossing.
Dec. 18.....	9.45 p.m...	Richmond St., London....	C-68884.....	Gates were down, crossing bell ringing and gate lanterns burning. Truck going north failed to notice gates down until close and slid on icy pavement into gate arm, breaking same.
Dec. 18.....	9.46 p.m...	Richmond St., London....	R-9864.....	Auto failed to see broken stump of gate arm down until too close and slid on icy pavement into it, completely breaking it off.
Dec. 19.....	8.41 p.m...	Waterloo St., London.....	OA-540.....	Auto crashed through southeast gate arm and was struck by passenger train, injuring driver of auto.
Dec. 19.....	.....	Front St. and Spadina Ave., Toronto.	K-8321.....	While all gates lowered for movement of yard engine, automobile travelling west on Front St. struck No. 6 gate, breaking axle of gate.
Dec. 21.....	5.15 p.m...	Thames St., Ingersoll.....	W-308.....	Auto unable to stop on icy roadway and slid into crossing gate arms, which were down, breaking them.
Dec. 29.....	5.15 p.m...	Pall Mall St., London.....	S-5830.....	Gates were all down, crossing bell ringing, and auto skidded 51 feet on icy road, striking gate arm, breaking same.
1936				
Jan. 1.....	12.40 a.m...	Front St. and Spadina Ave., Toronto.	B-8445.....	After gates lowered for movement of yard engine, automobile struck and damaged No. 6 gate, continued over crossing and struck No. 6 gate, breaking latter gate off at axle.
Jan. 5.....	1.45 a.m...	Queen St., Chatham.....	.....	Auto going south struck gate arm breaking it. Driver drove away before could secure name or licence No.
Jan. 6.....	9.45 p.m...	John St., Toronto.....	DD-15.....	While gates lowered for switching movement, automobile, travelling south on John St., was unable to stop, due to icy condition of roadway and struck northwest gate, breaking gate arm.

CANADIAN PACIFIC RAILWAY (EASTERN LINES)—*Continued*

ONTARIO DISTRICT—*Continued*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
1936 Jan. 8.....	1.00 p.m...	Adelaide St., London.....	T-436.....	Driver of auto disregarded watchman's stop sign and crossed tracks as yard engine approached crossing.
Jan. 9.....	11.37 a.m...	Richmond St., London....	R-6225.....	While yard engine backing car of coal across street into Hyman's Tannery, driver of auto disregarded watchman's stop sign and drove over tracks, nearly being struck and causing watchman to jump out of his way.
Jan. 11.....	10.10 p.m...	Richmond St., London....	R-6914.....	Gates were down for westbound freight train when auto going north ran into and broke gate arm. Crossing bell ringing and gate lanterns burning.
Jan. 23.....	3.40 p.m...	Church St., Weston.....	J-5412.....	After all gates lowered automobile in attempting to stop, skidded on icy pavement and struck gate, breaking gate shaft.
Jan. 25.....	2.30 p.m...	Richmond St., London....	T-58.....	Flagman was standing in centre of crossing with a stop sign and driver of auto disregarded same and crossed tracks in front of yard engine.
Jan. 29.....	6.12 p.m...	William St., Chatham....	O.C. 120.....	Gates were down and bell ringing. Auto slid on icy street under gate arm, scratching paint on car and slightly springing gate arms.
Feb. 4.....	5.45 p.m...	Front St. and Spadina Ave., Toronto.	C-6123.....	Automobile travelling east on Front St. was driven under No. 5 gate while being lowered and continued over crossing, striking and damaging No. 6 gate, latter gate being down.
Feb. 6.....	6.00 p.m...	MacLennan Ave., Toronto	A-5827.....	After north half of crossing gates had been lowered, automobile travelling north on MacLennan Ave. was driven over crossing and struck north gate, damaging same.
Feb. 6.....	2.00 a.m...	Pall Mall St., London.....	S-9647.....	Gates were down, crossing bell ringing. Auto ran into northeast gate arm, breaking same.
Feb. 25.....	11.40 a.m...	Richmond St., London....	C-24353.....	Truck disregarded watchman's stop signal and crossed tracks in front of yard engine.
Feb. 27.....	6.15 a.m...	Front St. and Spadina Ave., Toronto.	K-2338.....	Automobile proceeding north on Spadina Ave. was driven past city stop sign and under gate while same was being lowered, gate scraping top of car. Car did not stop.
Mar. 5.....	2.32 a.m...	Richmond St., London....	NW.-468.....	Auto going north unable to stop, ran into northewst gate arm. breaking same, and just missed being struck by freight train.
Mar. 9.....	6.00 p.m...	William St., Chatham....	U-8673.....	Auto ran into gate arm as yard engine approaching crossing. The crossing bell was ringing at the time.
Mar. 10.....	1.00 p.m...	Symington Ave., Toronto.	N-7091.....	After having stopped at crossing, due to all gates being down for movement of freight train, automobile started forward and struck southeast gate, damaging same.

CANADIAN PACIFIC RAILWAY (Eastern Lines)—*Concluded*

Ontario District—*Concluded*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
1936 Mar. 14.....	7.00 a.m...	Queen St., Chatham.....	C.G. 3861.....	As gates were being lowered for train No. 635 and crossing bell ringing, truck struck same, breaking two top boards on gate arm.
Mar. 14.....	9.30 p.m...	Front St. and Spadina Ave., Toronto.	B-7215.....	While all gates raised, taxi cab, travelling east on Front St., ran into No. 5 gate stand, breaking casting of stand. Driver arrested by city police for being intoxicated.
Mar. 15.....	2.55 a.m...	Waterloo St., London.....	T-8311.....	Gates were down, crossing bell ringing. Auto slid 125 feet on pavement and hit southeast gate arm, breaking it.
Mar. 17.....	1.40 a.m...	Dufferin St., Toronto.....	C-5226.....	While all gates lowered, automobile travelling south was driven through north barrier and continued over crossing, proceeding under south gate which had gone up when other gate broken, and did not stop.
Mar. 18.....	1.00 a.m...	Dufferin St., Toronto.....	M-9103.....	When all gates down, automobile travelling north on Dufferin St. struck and damaged south gate.

Algoma District

Jan. 13.....	12.20 a.m...	Elm St., Sudbury.....	LJ-29.....	Bell was ringing and gates were down when automobile (Marsh's Taxi) crashed into and broke northeast gate.
Jan. 14.....	7.35 a.m...	" "	LA-485.....	Bell was ringing and gates were down when automobile belonging to R. Laframboise crashed into and broke northeast gate.
Oct. 13.....	9.10 p.m...	" "	LB-197.....	Bell was ringing and gates were down when automobile crashed into same breaking both south gates.
Dec. 11.....	6.30 p.m...	" "	72412-C.....	Brake did not hold and auto ran into southwest gate breaking same. Bell was ringing and gates were down.
Dec. 22.....	3.00 a.m...	" "	LA-648.....	Both south gates were broken by automobile, although bell was ringing.

CANADIAN PACIFIC RAILWAY (Western Lines)

Manitoba District

Dec. 1.....	1.54 K.....	18th St., Brandon.....	Man. T-8-113....	Motor truck ran into north gate which had been lowered while No. 1 was passing; gate slightly damaged. Driver was arrested and sentenced to one week in jail.

CANADIAN PACIFIC RAILWAY (WESTERN LINES)—*Continued*

SASKATCHEWAN DISTRICT

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Oct. 1	18.05 K	Broadway, Yorkton	67-285	Regardless of stop signal drove across in front of engine.
Oct. 2	15.20 K	" "	41-437	" "
Oct. 2	17.10 K	" "	40-723	" "
Oct. 2	19.20 K	" "	20-437	" "
Oct. 3	17.45 K	" "	20-052	" "
Oct. 5	18.00 K	" "	PV1-423	" "
Oct. 9	19.45 K	" "	19-952	" "
Oct. 3	17.45 K	" "	T-1-867	" "
Oct. 10	14.45 K	" "	20-060	" "
Oct. 10	17.15 K	" "	T-1-935	" "
Oct. 11	12.40 K	" "	19-905	" "
Oct. 12	18.00 K	" "	21-409	" "
Oct. 13	19.20 K	" "	19-830	" "
Oct. 15	18.45 K	" "	20-256	" "
Oct. 17	19.20 K	" "	46-350	" "
Oct. 17	16.15 K	" "	20-437	" "
Oct. 25	19.25 K	" "	20-025	" "
Oct. 26	16.30 K	" "	FV1-366	" "
Nov. 5	15.45 K	" "	19-888	" "
Nov. 5	15.45 K	" "	FSV. 252	" "
Nov. 5	20.00 K	" "	19-789	" "
Nov. 9	18.45 K	" "	20-257	" "
Nov. 16	19.45 K	" "	28-302	" "
Dec. 1	15.11 K	" "	1-303	" "
Dec. 5	15.13 K	" "	T-315	" "
Dec. 6	15.55 K	" "	19-634	" "
Dec. 12	13.26 K	" "	1-326	" "
Dec. 19	20.00 K	" "	1,280	When No. 52 approached, was coming very fast and observing signal stopped on north rail but was able to back off in time.
Dec. 21	15.55 K	" "	20-013	Failed to stop for signal and crossed just ahead of train.
Dec. 4	15.18 K	Ave. A., Saskatoon	61-667	Refused to observe signal and crossed in front of train.
Dec. 31	18.55 K	" "	3798	" "
Dec. 23	15.40 K	West of Morse (Mile 73·7,5-549 Swift Current subdivision).		Drove car into right side of engine. Electric crossing bell was ringing at time.
1936				
Jan. 7	13.50	Broadway, Yorkton	41-293	Regardless of stop signal drove in front of engine.
Jan. 22	18.35	" "	1231	" "
Jan. 29	19.35	" "	20-256	" "
Jan. 28	17.15	" "	38-561	" "
Jan. 28	17.05	Ave. A, Saskatoon	890	Refused to stop and to avoid mishap watchman had to give engine emergency signal, car just missing engine by inches.
Feb. 10	17.19	" "	3170	Deliberately went around watchman when yard engine was on crossing.
Mar. 8	15.05	Broadway, Yorkton	46-460	Regardless of stop signal drove in front of engine.
Mar. 8	18.55	" "	20-293	" "
Mar. 13	15.35	" "	D-6	" "
Mar. 20	8.10	Ave. A., Saskatoon	10-865	Made "U" turn to right on diamond in front of engine.

CANADIAN PACIFIC RAILWAY (WESTERN LINES)—*Concluded*

ALBERTA DISTRICT

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Oct. 4.....	10.45 K.....	4th St. West, Calgary....	41-574.....	Ran into gate, breaking arm of same.
Oct. 17.....	10.35 K.....	" "	Not known.....	" "
Nov. 19.....	2.35 K.....	Allowance Ave., Medicine Hat.	"	" "
Dec. 14.....	20.00 K.....	4th St. W., Calgary.....	5-221.....	" "
Dec. 21.....	12.15 K.....	" "	6881.....	" "
Dec. 23.....	19.35 K.....	" "	Not known.....	" "
Jan. 10.....	24.00 K.....	4th St. W., Calgary.....	7737.....	Ran into and broke arm of gate which was down.
Jan. 14.....	17.00.....	Allowance Ave., Medicine Hat.	18-795.....	Car ran into south gate breaking same.

BRITISH COLUMBIA DISTRICT

Mar. 18.....	17.30.....	North Vancouver Ferry...	37-619.....	Auto coming off ferry went under gate as it was coming down and gate on opposite side of track already down.

MISHAPS AT PUBLIC HIGHWAY CROSSINGS, WHERE NO PERSONAL INJURY INVOLVED, PERIOD FROM JULY 1 TO DECEMBER 31, 1935

Division	Date	Location	Particulars
Kenora	Sept. 5	Beausejour, Mileage 30·84, Lac Du Bonnet Subdivision.	Sam Gretzinger, Beausejour, owner and driver of Chevrolet Sedan, Man. Licence No. 33048, came onto track immediately last car of train No. 2 passed over crossing and drove in front of train No. 207 Westbound, which was pulling out of Beausejour over passing track. Auto was struck by engine 2077, train No. 207. Damage to auto, $75.00. No damage to engine.
Winnipeg Terminals	Sept. 16	Plinquet St. Crossing, Saint Boniface.	Coal truck owned and driven by J. Nepen, licence No. C.T. 338, proceeding east over crossing, when a flat car which was being pushed by yard engine, struck the truck. Driver of truck slowed up and then picked up speed to beat train. Sills and stakes of truck damaged. No damage to car.
	Sept. 16	Siding L-17, Ross Ave. and Arlington St., Winnipeg, Man.	Cadillac Sedan driven by C. T. Lount, Man. licence No. 9673, proceeding south on Arlington Street, was struck by dump car C.O.W. 11, which was being pushed by engine 6266 over Arlington Street to City High Line. Yardman was standing in centre of street holding "Stop" sign and had to jump aside to escape being run down. Considerable damage to auto. Brake mast and sill step bent of C.O.W. car No. 11.
	Oct. 4	Marion St. Crossing, Saint Boniface.	Truck and trailer, licence numbers C. 7659, C.T. 659, driven by S. Richot, loaded with cordwood, travelling west over crossing, ran into side of engine which was backing up with fifty cars. Driver of truck advised that his brakes would not hold as he had applied them when some distance from crossing. Slight damage to truck. No damage to engine.
	July 20	100 yards East of Whitter Jct. Tower, Mileage 124·5, Keewatin Subdivision.	Ford touring car travelling north, Man. licence 16366, driven by H. Cox, stalled on crossing and was struck by Extra East 5357. Auto demolished. No damage to Company's property.
	Oct. 13	Siding S-41-B, Canada Packers Plant, Saint Boniface.	Auto owned and driven by A. Bakalryk, licence No. 29009, ran into leading car of five cars of stock which were being placed for unloading at Canada Packers plant. Slight damage to auto. No damage to Company's property.
Portage	Nov. 5	Aberdeen Ave., Mileage 0·84, Winnipeg Beach Subdivision.	Extra South, engine 476, struck rear right corner of trailer attached to International wood truck, Man. licence No. C.T. 62, driven by owner H. H. Thurston, 155 Alexander Ave., Winnipeg. Damage to engine $3.50. Considerable damage to truck.
	Dec. 6	Polson Avenue, 22 Poles North, Mileage 1, Winnipeg Beach Subdivision.	Auto, Man. licence No. 7-458, driven by F. J. Nichols, 394 Cathedral Ave., Winnipeg, ran into side of track motor car on crossing. No damage to track motor. Slight damage to auto.
	Dec. 10	Mountain Avenue, Morden, Mileage 79·3, La Riviere Subdivision.	Train No. 80 struck a sleigh loaded with wood, driven by A. Siebert, which was stalled on crossing. Horses had been unhitched from sleigh before being struck. Sleigh badly damaged. Damage to operating lever of drawbar on pilot of engine.
	Dec. 10	8th Ave., Portage la Prairie	Sleigh loaded with wood, driven by W. J. Askin, stalled on crossing and was struck by train No. 4. Horses had been unhitched from sleigh before being struck. No damage to engine. Slight damage to sleigh.

MISHAPS AT PUBLIC HIGHWAY CROSSINGS, WHERE NO PERSONAL INJURY INVOLVED, PERIOD FROM JULY 1 TO DECEMBER 31, 1935—*Continued*

Division	Date	Location	Particulars
Brandon	Oct. 3	Main St., Moosomin, Sask., Mileage 86·9, Broadview Subdivision.	When train No. 74 was approaching Moosomin station and passing over crossing, Chevrolet Sedan, Sask., licence No. 26029, driven by J. J. McDougall, ran into side of engine. Front end of auto damaged. No damage to engine.
	Dec. 16	Mileage 114, Neudorf Subdivision.	Train No. 60 struck sleigh loaded with poles which had stalled on crossing. Horses broke away from sleigh and were uninjured. Front section of sleigh broken. No damage to engine.
Regina	Nov. 13	Crossing just west of Pasqua Station (Mileage 127·7, Indian Head Subdivision).	Auto driven by Mr. Short of Pasqua, ran into side of Train No. 2.
Moose Jaw	Dec. 23	Crossing just west of Morse Station (Mileage 73·7, Swift Current Subdivision).	Auto driven by Mr. Adolph Sauder, ran into Engine 2819 on Train No. 2.
Saskatoon	July 22	Crossing at 20th Street West, Saskatoon (Mileage ·8, Wilkie Subdivision).	Train No. 52, Engine 2519, struck auto truck. Wig-wag was operating and warning bell ringing, but auto driver failed to stop, and rear of truck was struck by buffer on left side, turning truck over.
Medicine Hat	Aug. 27	Success	Extra 850 east struck auto driven by J. J. Tone at farm crossing 8 poles west of M. 16, Empress Subdivision, Sask. Licence 59-203.
	Oct. 3	M. 45·2, Bassano Subdivision.	Automobile driven by J. Hovlan ran into side of engine 5168, train No. 90. Alberta licence 46-258.
	Nov. 22	M. 60·1, Langdon Subdivision.	Extra 5132 struck sleigh driven by J. Harsch; rear runners stalled on rails.
	Dec. 2	M. 57·3, Maple Creek Subdivision.	Ford truck driven by A. Osberg ran into side of engine 5135. Sask. licence FT. 12-921.
	Dec. 25	M. 78·7, Langdon Subdivision.	Car driven by J. J. Thompson ran into train, engine 3625.
Lethbridge	Sept. 14	M. 25·6, Macleod Subdivision.	Gasoline truck driven by T. Christison ran into engine of train No. 990. Alta. licence B-885.
	Oct. 25	M. 13·03, Turin Subdivision.	Dodge sedan driven by C. Burns drove onto crossing in front of Work Extra 3711 which was backing over crossing. Alta. licence 22-114.
Calgary	Oct. 3	M. 39·3, Red Deer Subdivision.	Ford truck driven by A. Sorken struck by engine of No. 526. Alta. licence B-3068.
Edmonton	Sept. 14	M. 60, Wetaskiwin Subdivision.	Train No. 70, engine 1019 struck wagon and team of horses driven by N. Bradley.
Revelstoke	Sept. 19	Armstrong-Okanagan Subdivision, Okanagan street crossing.	Chevrolet coupe, B.C. 36-941, owned by J. Schubert, Armstrong, driven by Mrs. Schubert, ran into front end of engine 585, train extra south. Slight damage to automobile.
	Oct. 16	Mile 92·8, Lake Windermere Subdivision.	When train No. 832 standing, Chevrolet automobile, B.C. 60-089, owned and driven by W. Hart, Athalmer, struck flat car standing on crossing. Damage to automobile $25.00.
	Oct. 23	Rutland, Mile 113, C.N.R. Okanagan Subdivision.	C.P.R. train No. 707 approaching crossing at 5 miles per hour, truck B.C. 32-007, owned and driven by R. G. Bury, Rutland, stalled on crossing and was struck by engine 586. Frame, fender and windshield of truck damaged.
	Dec. 24	Mile 92·8, Lake Windermere Subdivision.	Auto. B.C. 60-007, driven by Walter Sjodin, failed to notice crossing blocked by No. 829, which was switching, and struck C.P. 283763. Slight damage to auto.

MISHAPS AT PUBLIC HIGHWAY CROSSINGS, WHERE NO PERSONAL INJURY INVOLVED, PERIOD FROM JULY 1 TO DECEMBER 31, 1935—*Concluded*

Division	Date	Location	Particulars
	Aug. 31...	Coquitlam-Cascade Subdivision, Shaughnessy St.	Dodge sedan, Ohio licence V761-L, ran into caboose being kicked over crossing by extra 3400 east. Slight damage to auto.
	Dec. 5...	Westminster-Columbia St. (yard tracks).	Auto. B.C. 43-445 ran into pilot on tender of engine 3456 off extra south. Slight damage to auto.
	Dec. 31...	Mile 103·11, Cascade Subdivision near Hammond-River Road.	Chevrolet coupe, B.C. 66-678 ran into side of extra 3627 east, and badly damaged.
Kootenay.....	Oct. 1...	Tadanac yard-main public highway crossing.	Yard engine 3512 coming off foundry track pushing three cars. Yardman stationed on crossing signalled auto 57-354 to stop, but driver paid no heed and endeavoured to go over crossing ahead of train and struck leading car a glancing blow. Did not stop and apparently slight damage to auto.
	Nov. 21...	Tadanac yard—main public highway crossing.	Yard engine 3512 pushing 15 cars along main line at four miles per hour, and when nearing crossing in vicinity of Tadanac station, trainman saw light delivery truck 59-052 approaching and swung lantern as an added warning, but driver drove on to crossing directly in front of train movement and auto was struck, box of same being slightly damaged and left rear fender torn off. Truck owned by Train Livery Company. Crossing protected by lights and automatic bell, which were working in good order.
	Dec. 17...	Grand Forks—Winnipeg Ave	When train No. 12, engine 3620, nearing Grand Forks station at about five miles per hour, fireman saw a truck (licence 57-373) and trailer driven by Mike Zeibin, loaded with logs, approaching crossing at high speed, and shouted to engineer to apply emergency brake, which was done. Drawbar of engine struck the truck. turning it and the trailer over on their sides. Provincial police officer was witness of mishap and truck driver convicted of driving to common danger.
Kettle Valley	Nov. 8...	Penticton—Lakeshore Drive Mile 135·4 Carmi Subd'n.	While yard extra 3506 switching at Penticton, Ford coupe, B.C. 32833, owned and driven by Dr. Fred Paul, approaching Lakeshore Drive crossing from west, was flagged by trainman and stopped. Driver of auto saw an opening between cars and thought he could get through, and started to cross, and was struck by C.P. 207106, which was being switched over crossing. Damage to auto about $235.00.

MISHAPS AT PRIVATE CROSSINGS WHERE NO PERSONAL INJURY INVOLVED

Division	Date	Location	Particulars
Vancouver Division	Aug. 7...	Vancouver—Smythe Street, (yard crossing).	Auto B.C. 93-859 ran into box car being kicked over crossing. Considerable damage to auto.
Kootenay Division..	Nov. 12...	Nelson yard.....	Yard engine headed west, pulling two cars out of spur at speed of four or five miles per hour. Auto 54-680, owned and driven by E. Horton, travelling down Stanely St. came on to private crossing leading to W. W. Powell Lumber Co. immediately in front of engine and was struck and pushed to side of track. Damage to auto very slight.

SUMMARY

—	Number	Per cent
Auto running into side of train	20	9·26
Auto drivers failed to see or hear train	2	0·93
Auto driver attempted to cross track ahead of train	3	1·39
Auto drivers failed to look out for train	3	1·39
Auto stopped foul of track	2	0·93
Auto driver not having car under control	1	0·46
Auto skidded on to track due to slippery pavement	13	6·01
Auto approached crossing at excessive speed	11	5·09
Auto stopped on crossing	2	0·93
Auto stalled on crossing	1	0·46
Auto drove past watchman's signal	2	0·93
Auto drove under-gates as they were being lowered	20	9·26
Auto driver not paying attention to highway signs	1	0·46
Auto ran through lowered gates	54	25·00
Auto smashed into lowered gates	5	2·32
Auto driver disregarded flagman's signal	12	5·55
Auto struck by train	14	6·48
Auto turned on crossing in front of train	2	0·93
Disregarded stop signal and drove on to crossing ahead of engine	37	17·12
Backed into gates	1	0·46
Horse-drawn vehicle passed over crossing ahead of train	1	0·46
Horse-drawn vehicle ignored stop signal	2	0·93
Horse-drawn vehicle struck by train	5	2·32
	216	100·00

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The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXVI | Ottawa, June 15, 1936 | No. 7

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ORDER No. 53116

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

SATURDAY, the 16th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Supplement No. 9 to Tariff C.R.C. No. E-4369, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 9 to Tariff C.R.C. No. E-4369, approved herein, is 79½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53117

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

SATURDAY, the 16th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in item 2756 of Supplement No. 2 to Tariff C.R.C. No. E-4775, filed by the Canadian Pacific Railway Company under section 9 of

the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 2 to Tariff C.R.C. No. E-4775, approved herein, are those shown in Scale " J " of Tariff C.R.C. No. E-4221.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53118

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

SATURDAY, the 16th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 400 of Supplement No. 4 to Tariff C.R.C. No. E-4775, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 4 to Tariff C.R.C. No. E-4775, approved herein, is 31 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53119

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 16th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board Orders:

1. That the tolls published in Supplement No. 3 to Tariff C.R.C. No. 807, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic

carried under the said Supplement No. 3 to Tariff C.R.C. No. 807, approved herein, are as follows:—

To	Cents per 100 pounds C.L.	L.C.L.
Clara Belle. Ont.	84½	127
Copper Cliff, Ont.	84½	127

One and one-half cents per 100 pounds to be deducted account of water movement.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53120

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 16th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board Orders:

1. That the tolls published in items 240 and 253 of Supplement No. 97 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 97 to Tariff C.R.C. No. 856, are as follows:—

Item	Cents per 100 pounds
240 Auburn, N.S., to Truro, N.S.	11½
253	14½

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53121

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 16th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 305B for Bradalbane, P.E.I., of Supplement No. 98 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic

carried under the said Supplement No. 98 to Tariff C.R.C. No. 856, approved herein, is 12½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53122

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 16th day of May, A.D. 1936.

Hon. HUGH GUTHRIE. K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 241 of Supplement No. 30 to Tariff C.R.C. No. 906, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 30 to Tariff C.R.C. No. 906, approved herein, is 6½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53123

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 16th day of May, A.D. 1936.

Hon. HUGH GUTHRIE. K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in items 248, 249, and 251-A of Supplement No. 31 to Tariff C.R.C. No. 906, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 31 to Tariff C.R.C. No. 906, approved herein, are as follows:—

Item	Cents per 100 pounds
248	10½
249 To Digby, N.S.	11
Annapolis, N.S.	11
251–A From Bridgetown, N.S.	5½

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53115

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

MONDAY, the 18th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

It is ordered: That the tolls published in the following tariffs, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement	56	to	Tariff	C.R.C. No.	E-1234
"	117	"	"	"	E-1235
"	25	"	"	"	E-1253
"	10	"	"	"	E-1308
"	58	"	"	"	E-1804
"	59	"	"	"	E-1804
"	34	"	"	"	E-1829
"	28	"	"	"	E-1911
"	26	"	"	"	E-1974
"	18	"	"	"	E-2248

Tariff C.R.C. No. E-2415.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53124

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 18th day of May, A.D. 1936.

Hon. HUGH GUTHRIE. K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 1002, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 1002, approved herein, are as follows:—

To	Cents per 100 pounds
Fredericton, N.B.	20½
Grand Falls, N.B.	22½
Woodstock, N.B.	22½
Argosy, N.B.	26

One and one-half cents per 100 pounds to be deducted account of water movement.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53125

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 18th day of May, A.D. 1936.

Hon. HUGH GUTHRIE. K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 1003, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 1003, approved herein, are as follows:—

To	Cents per 100 pounds
Fredericton, N.B.	20½
Grand Falls, N.B.	22½
Woodstock, N.B.	22½
Nashwaaksis, N.B.	23½
Argosy, N.B.	26

One and one-half cents per 100 pounds to be deducted account of water movement.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53126

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 18th day of May, A.D. 1936.

Hon. HUGH GUTHRIE. K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 1004, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 1004, approved herein, are as follows:—

To	Cents per 100 pounds
Fredericton, N.B.	20½
Grand Falls, N.B.	22½
Woodstock, N.B.	22½
Burtt's Corner. N.B.	24
Nashwaaksis, N.B.	23½
Argosy, N.B.	26

One and one-half cents per 100 pounds to be deducted account of water haul.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53127

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 18th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 1005, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 1005, approved herein, are as follows:—

Item	From	Cents per 100 pounds
1	Halifax, N.S.	43½
	Yarmouth, N.S.	45
2	Halifax, N.S., rates in effect prior to July 1, 1927.	
	From	
3	Halifax, N.S.	34
	Yarmouth, N.S.	36½
	To	
4	Guelph, Ont.	45½
	Simcoe, Ont.	45
	Toronto, Ont.	40½
5		41½

One and one-half cents per 100 pounds to be deducted account of water movement.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53128

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

MONDAY, the 18th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 744, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 744, approved herein, is 5 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53129

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

MONDAY, the 18th day of May, A.D. 1936.

Hon. HUGH GUTHRIE. K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 745, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 745, approved herein, are as follows:—

From	Cents per 100 pounds
Edmundston, N.B.	37
Ste. Rose, Que.	32½
Notre Dame du Lac, Que.	29
Cabano, Que.	26½
St. Louis du Ha Ha, Que.	25
St. Honore, Que.	22½

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53134

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 21st day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in items 97 and 146 of Supplement No. 9 to Tariff C.R.C. No. 907, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 9 to Tariff C.R.C. No. 907, approved herein, are as follows:—

Item		Cents per 100 pounds
97	To Middleton, N.S.	5½
	Bridgetown, N.S.	6
	Yarmouth, N.S.	4½
146	To Middleton, N.S.	11
	Bridgetown, N.S.	12
	Yarmouth, N.S.	15½

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53133

In the matter of the application of the Brandon, Saskatchewan, and Hudson's Bay Railway Company for approval of the abandonment of operation of its line of railway between Brandon, Manitoba, and the International Boundary; and Order No. 53092, dated May 14, 1936, authorizing the said Railway Company to cease operation thirty days from the date of the said Order.

File No. 35629.1

FRIDAY, the 22nd day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

Whereas it is necessary to issue tariff schedules giving less than statutory notice, in order to provide for cancellation of rates on the said line and to and from points thereon and other stations in Canada and the United States, effective June 14, 1936, when operation will cease,—

It is ordered: That railway companies and tariff-publishing agents be, and they are hereby, permitted to file tariff schedules effective on one day's notice providing for cancellation of tariffs containing rates, fares, charges, and regulations applying between points on the Brandon, Saskatchewan and Hudson's Bay Railway, also to and from points thereon and other stations in Canada and the United States, effective not earlier than June 14, 1936.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53153

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for permission to amend its tariff C.R.C. No. E-4755, on less than statutory notice:

File No. 27612.137

THURSDAY, the 28th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that, through error, the rate on bituminous coal from Midland to Lindsay, Ontario, as published by the applicant company is not the same as in effect via Canadian National Railways between the same points.

It is Ordered: That the applicant company be, and it is hereby, permitted to publish and file, upon three days' notice, a supplement to tariff C.R.C. No. E-4755, amending the rate on bituminous coal from Midland to Lindsay, Ontario, providing that the rate is exclusive of handling and wharfage charges at Midland, Ontario.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53154

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 28th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board Orders:

1. That the tolls published in item 120 of Supplement No. 6 to Tariff C.R.C. No. E-4775, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 6 to Tariff C.R.C. No. E-4775, approved herein, are as follows:—

To	Cents per 100 pounds
Montreal, Que.	51½
Toronto, Ont.	61

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53155

In the matter of the application of the Detroit and Windsor Subway Company and the Detroit and Canada Tunnel Co., hereinafter called the "Applicant Companies," for approval of Supplement No. 6 to Tariff C.R.C. No. 18, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5:

THURSDAY, the 28th Day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant companies' said Supplement No. 6 to Tariff C.R.C. No. 18, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5, be, and it is hereby, approved.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53157

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 28th Day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item 390, first revised page 25, of Tariff C.R.C. No. E-4757, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said first revised page 25 of Tariff C.R.C. No. E-4757, approved herein, is 3 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53158

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

THURSDAY, the 28th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

It is ordered: That the tolls published in Supplement No. 26 to Tariff C.R.C. No. E-1253, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53156

In the matter of the application of the Brandon, Saskatchewan and Hudson's Bay Railway Company, hereinafter called the "Applicant Company," under Section 330 of the Railway Act, for approval of Supplement No. 1 to its Standard Freight Tariff C.R.C. No. 1737.

File No. 35629.1

FRIDAY, the 29th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant company's Supplement No.1 to its Standard Freight Tariff C.R.C. No. 1737 be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette.*

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53159

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 30th day of May, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 85A of Supplement No. 1 to Tariff C.R.C. No. 986, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion, when for local delivery, to be reported at 11 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal toll, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 1 to Tariff C.R.C. No. 986, approved herein, is 13·5 cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

SUMMARIES OF ORDERS ISSUED BY THE BOARD OF RAILWAY COMMISSIONERS

52957. Mar. 31—(OMITTED FROM PREVIOUS SUMMARY)—Directing C.N. Rys. to install double bells and wigwags at crossing of St. Johns Highway, mileage 14·5 Rouse's Point Subd'n, known as La Bataille Crossing, Parish of Laprairie, Que.

53057. May 4—Authorizing Toronto Harbour Comm'rs to construct spur to serve Link-Belt Limited, near Leslie street, Toronto, Ont.

53058. Apl. 29—Directing New York Central R.R. to install bells and wigwags in lieu of lightning flash signals at crossing of Malden road, 0·73 mile east of Woodslee, Ont.

53059. May 1—Disallowing certain supplements to tariffs of G.N. Ry. and C.P.R. cancelling rates between stations on Crows Nest Southern Ry. within Canada.

53060. Apl. 29—Authorizing Toronto, Hamilton and Buffalo Ry. to close its station at Chantler, Ont.

53061. Apl. 30—Directing New York Central R.R. to install bells and wigwags in lieu of lightning flash signals at crossing of Trudell side road 3·09 miles east of Tilbury, Ont.

53062. May 6—Permitting C.N. Rys. to file on one day's notice a reduction in rates now published on paperboard and pulpboard in item 620 of Tariff C.R.C. No. E-2382, with an increase in the minimum weight from 40,000 to 60,000 lbs.

53063. May 5—Authorizing C.N. Rys. and C.P.R. to include form of release limiting liability in their tariffs in connection with the transportation of automobiles shipped in freight service on passenger transportation under what is termed the "Passenger with Automobile Plan".

53064. May 7—Extending until May 12, 1937, time within which the C.N. Rys. may construct spur across Wellington, Ann, and Smith streets, and tracks of Montreal Tramways Co., Montreal, Que.

53065. May 1—Directing C.N. Rys. to install bell and wigwag at crossing of King's Highway No. 5 one mile west of Canfield, Ont.

53066. May 2—Directing New York Central R.R. to install bell and wigwag in lieu of existing bell on south side of Southwick street, St. Thomas, Ont.

53067. May 7—Authorizing C.P.R. to shorten westbound operating circuit from 1,584 to 1,220 feet in length at crossing of Dundas street, Woodstock, Ont.

53068. May 8—Disallowing supplements to G.N. Ry. tariffs in so far as they refer to passenger fares, rules and charges between points on the Crows Nest Southern Ry. in Canada.

53069. May 8—Authorizing C.P.R. to reconstruct bridge No. 45·45 over Salmon river at Chipman, N.B.

53070. May 9—Refusing application of Municipalities of Ste Emelie, Village of Leclercville Que., et al, for restoration of C.N. Rys. train service which formerly existed between Parisville and Deschaillons, Que.

53071. May 12—Permitting Express Traffic Ass'n of Canada to publish special tariff on eggs, in cases, and on the returned empties, to points in Sask. and Manitoba, to become effective on 3 days' notice but not earlier than May 18, 1936.

53072. May 9—Authorizing C.N. Rys. to construct extension to business siding across public road at Cote, N.B.

53073. May 12—Relieving New York Central R.R. from maintaining cattle guards at 10 crossings in Tp. Raleigh, Ont.

53074. May 11—Declaring C.P.R. crossing, first west of Winkler station, Man., protected to Board's satisfaction.

53075. May 9—Approving agreement between Bell Telephone Co., and Muskoka and Parry Sound Telephone Co., Ltd.

53076. May 9—Directing New York Central R.R. to install bells and wigwags in lieu of lightning flash signals at crossing of Concession road, 0·88 mile east of Pelton, Ont.

53077. May 8—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, toll published in Supp. 8 to tariff C.R.C. No. 3, filed by Maritime Coal, Ry. & Power Co., under sec. 9.

53078. May 8—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls
53079. published in tariffs and supplements filed by C.P.R. under sec. 9.

53080. May 8—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls
53081. published in tariffs and supplements filed by Dominion Atlantic Ry.
53082. under sec. 9.
53083.
53084.

53085. May 8—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in item 25 of tariff C.R.C. No. 743 filed by Temiscouata Ry. under sec. 9.

53086. May 12—Authorizing C.P.R. to construct spur to serve Imperial Tobacco Co., of Canada, Ltd., crossing Montreal Tramways Co., and St. Antoine street, Montreal, Que.

53087. May 12—Amending Order 53043, Apl. 29, 1936, by striking out word "Amherstburg" and substituting therefor word "Barrie" in item 545, sec. 2—Maritime Freight Rates.

53088. May 11—Amending Order 53040, Apl. 28, 1936, by striking out words "Rambler street" wherever they occur in Order and substituting therefor the words "Sackville road"—C.N. Rys. spur at Amherst, N.S.

53089. May 13—Authorizing New York Central R.R. to close station at Attercliffe, Ont.

53090. May 12—Authorizing Billmor Spruce Mills Limited to construct pipe line under C.N. Rys. at mileage 112·7 Skeena Subd'n, B.C.

53091. May 12—Authorizing Mun. of Marston, Que., to construct highway across C.P.R. at about 300 feet east of line between Ranges 12 and 13 of Tp. Marston, Que.

53092. May 14—Authorizing abandonment of Brandon, Sask. & Hudson Bay Ry. from Brandon, Man., to International Boundary.

53093. May 14—Declaring C.N. Rys. crossing, first north of Upper Lachine road crossing, Ville St. Pierre, Que., protected to Board's satisfaction.

53094. May 12—Reporting to Governor in Council for sanction by-law No. 18 of Quebec Central Ry. forbidding persons to stand or stay on platforms of cars, etc

53095. May 13—Declaring C.N. Rys. crossing (Gibson's Crossing) near Levis, Que., satisfactorily protected so long as speed limitation of 15 miles an hour imposed by Order 49158 is in effect.

53096. May 13—Approving and authorizing clearances of fire walls at freight shed located on C.P.R. tracks Nos. 1 and 6, and transfer canopy located on tracks Nos. 3 and 4, at Quebec, P.Q.

53097. May 13—Approving and authorizing clearances at loading platform of Crows Nest Pass Lumber Co., Ltd., at Skookumchuck, B.C.,—C.P.R.

53098. May 14—Directing C.N. Rys. to erect suitable addition to present station building at St. Jean-Chrysostome, Que.

53099. May 14—Authorizing Village of McBride, B.C., to construct crossing of wye track of C.N. Rys. at McBride, B.C.

53100. May 12—Directing C.N. Rys. to construct approaches to crossing of Victoria street, Iroquois, Ont.

53101. May 12—Relieving New York Central R.R. from maintaining cattle guards at four crossings in the Tp. of Tilbury, Ont.

53102. May 12—Relieving New York Central R.R. from maintaining cattle guards at six crossings in Tp. of Windham, Ont.

53103. May 13—Directing C.N. Rys. to install bell and wigwag at crossing of Vidal street, Sarnia, Ont.

53104. May 14—Amending Order 52435, Nov. 4, 1936, by striking out figures "$770.00" in 4th line of paragraph 2, and substituting therefor figures "$776.31"—Improvement to view at C.P.R. crossing of Highway No. 8, mileage 27·94 Waltham Subd'n, Que.

53105. May 16—Approving plan showing proposed electric interlocking replacing mechanical interlocking at crossing of C.P.R. and C.N. Rys. at Woodstock East, Ont.

52106. May 14—Approving location and details of C.N. Rys. station to be constructed at Upper Dorchester, N.B.

53107. May 16—Extending until Sept. 15, 1936, time within which Vancouver, Victoria & Eastern Ry. & Nav. Co., may carry out provisions of Order No. 51690 and re-establish by June 15, 1936, regular train service between international Boundary and Princeton, B.C.

53108. May 16—Declaring C.N. Rys. crossing, first west of Coldbrook Station, N.B., protected to Board's satisfaction.

53109. May 18—Amending Order 29359, Feb. 9, 1920, to provide that expense of maintaining crossing over C.P.R. in SW¼ of sec. 17-38-27, W3M., Sask., be borne and paid by Village of Primate, Sask.

53110. May 14—Approving plans showing proposed construction of dam at Algoma Central & H.B. Ry's Montreal River Crossing, 92 miles north of Sault Ste. Marie, Ont.

53111. May 16—Declaring Central Vermont Ry. crossing, second north of Stanbridge Station, Que., protected to Board's satisfaction.

53112. May 18—Rescinding Order 52956, Apl. 1, 1936, requiring C.P.R. to reconstruct and relocate station building at Meath Park, Sask.

53113. May 19—Authorizing Sask. Dep't Highways and Transportation to construct highway crossing over C.N. Rys. on road allowance east of SE¼ sec. 11-45-2 W2M., Sask.

53114. May 19—Requiring Tp. Lancaster, Ont., to grade approach to north side of crossing of C.N. Rys. between Lots 31 and 32, Con. 1, Tp. Lancaster, Ont.

53115. May 18—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in tariffs filed by C.N. Rys. under sec. 3.
53116. May 16—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in tariffs and supplements filed by C.P.R. under sec. 9.
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53118.
53119. May 16—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in tariffs and supplements filed by Dominion Atlantic Ry. under sec. 9.
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53128. May 18—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in tariffs filed by Temiscouata Ry. under sec. 9.
53129.
53130. May 20—Declaring C.N. Rys. crossing of Upper Lachine road (St. James street) at Ville St. Pierre, Que., protected to Board's satisfaction.
53131. May 20—Extending until July 16, 1936, time within which C.P.R. may install automatic bell and wigwag at crossing at mileage 93·1 Red Deer Subd'n, Alta.
53132. May 19—Authorizing Town of Coniston, Ont., to construct highway crossing over C.P.R. at mileage 71·3 Cartier Subd'n, Ont.
53133. May 22—Permitting railways and tariff publishing agencies to file tariff schedules for cancellation of tariffs containing rates, fares, charges and regulations applying between points on Brandon, Sask. & H.B. Ry.
53134. May 21—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in items 97 and 146 of Supp. 9 to tariff C.R.C. No. 907 filed by Dominion Atlantic Ry. under sec. 9.
53135. May 21—Authorizing C.N. Rys. to close and divert north and south road allowance between NW¼ Sec. 16-39-3 and NE¼ Sec. 17-39-3 W5M., Alta.
53136. May 23—Declaring C.N. Rys. crossing of Clarence avenue, Mun. of Port Garry, Man., protected to Board's satisfaction.
53137. May 23—Declaring C.P.R. crossing of Victoria street, Alliston, Ont., protected to Board's satisfaction.
53138. May 21—Approving construction of sidewalk by way of extension to overhead highway at Mountain Road crossing of C.N. Rys. at Moncton, N.B.
53139. May 22—Relieving C.P.R. from maintaining cattle guards at crossings at mileage 15·9 and 20·2 Hamilton-Goderich Subd'n, Ont.
53140. May 23—Extending until Aug. 31, 1936, time within which C.N. Rys. may install two wigwag signals at Cook's Brook, N.B.
53141. May 23—Directing that all trains of Algoma Central & Hudson Bay Ry. and C.N. Rys. come to stop before proceeding over crossing at mileage 80·54 Port Arthur-Sudbury Branch, Ont., and rescinding Orders 44751 and 51909.
53142. May 23—Declaring London & Port Stanley Ry. crossing of Centre street, St. Thomas, Ont., protected to Board's satisfaction, so long as speed limitation of 10 miles an hour is in effect.
53143. May 27—Declaring C.P.R. crossing at mileage 23·05 Leduc Subd'n, Alta., protected to Board's satisfaction.
53144. May 27—Refusing application of Wilbert Collard for an Order directing C.P.R. to have its trains Nos. 27 and 28 stop on flag at Paget Station, Ont.
53145. May 27—Authorizing Village of St. Joseph de Grantham, Que., to construct highway crossing over C.P.R. at St. Marcel street, in said village.
53146. May 26—Authorizing C.N. Rys. to construct a crossing over road diversion in NE¼ Sec. 10-29-20 W4M., near Drumheller, Alta.
53147. May 23—Directing Hamilton Street Ry. to pay to Toronto, Hamilton & Buffalo Ry. the sum of $48,000, and on receipt thereof the T.H. & B. Ry. forthwith pay to City of Hamilton, Ont., the sum of $19,200 (its interest of 40 per cent therein) the said payments to be in full satisfaction of all claims any of parties may have in respect of costs of construction of James Street subway, Hamilton, Ont.
53148. May 27—Relieving New York Central Ry. from maintaining cattle guards at Town Line Road, Mile Post 99·50 and Mile Post 100·67 Tp. of South Dorchester, Ont.
53149. May 27—Relieving New York Central Ry. from maintaining cattle guards M.P. 191·08 and M.P. 191·91, Tp. North Tilbury, Ont.
53150. May 28—Relieving New York Central Ry. from maintaining cattle guards at twelve crossings in Tp. Southwold, Ont.
53151. May 28—Relieving New York Central Ry. from maintaining cattle guards at five crossings in Tp. Dunwich, Ont.

53152. May 28—Relieving New York Central Ry. from maintaining cattle guards at ten crossings in Tp. Rochester, Ont.

53153. May 28—Permitting C.P.R. to publish and file on three days' notice, supplement to tariff C.R.C. No. E-4755, amending rate on bituminous coal from Midland to Lindsay, Ont., providing that rate is exclusive of handling and wharfage charges at Midland.

53154. May 28—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in item 120 of Supp. 6 to tariff C.R.C. No. E-4775, filed by C.P.R. under sec. 9.

53155. May 28—Approving Detroit & Windsor Subway Co. and Detroit & Canada Tunnel Co's Supp. 6 to tariff C.R.C. No. 18 covering tolls to be charged in respect of the Detroit Tunnel.

53156. May 29—Approving Brandon, Sask. & Hudson Bay Ry's Supp. 1 to its Standard Freight Tariff C.R.C. No. 1737.

53157. May 28—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, toll published in item 390, first revised page 25, of tariff C.R.C. No. E-4757, filed by C.P.R. under sec. 9.

53158. May 28—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in Supp. 26 to tariff C.R.C. No. E-1253 filed by C.N. Rys. under sec. 3.

53159. May 30—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, toll published in item 85A of Supp. 1 to tariff C.R.C. No. 986, filed by Dominion Atlantic Ry. under sec. 9.

53160. May 30—Authorizing New York Central R.R. to remove station building at Cornell, Ont.

53161. May 30—Authorizing Toronto Harbour Comm'rs to construct extension of their main lead track from present terminus on Unwin avenue, Toronto, Ont., to serve Consolidated Coal & Dock Co., Ltd.

53162. May 29—Requiring C.N. Rys. to repair fences along right of way in vicinity of mileage 38 Chandler Subd'n, at Newport Center, Que.

53163. June 1—Extending until June 30, 1936, time within which the Commercial Travellers Ass'n, et al, may apply to the Board for leave to appeal to the Supreme Court of Canada from General Order 554, requiring railway companies to grant same special transportation rates to Associated Canadian Travellers, of Calgary, Alta., as they extend to other commercial travellers' associations in Canada.

53164. May 30—Extending until Aug. 31, 1936, time within which C.N. Rys. may install double bells and wigwags at crossing of St. Johns Highway between Brosseau and Lacadie, Que.

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXVI | Ottawa, July 1, 1936 | No. 8

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Application of the Pere Marquette Railway Company for permission to close Fargo Station, in the Province of Ontario, as an Agency.

File No. 4205.1053

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER:

This is an application by the Pere Marquette Railway Company for permission to close Fargo station, in the province of Ontario, as an agency.

The station at Fargo is used jointly by the Pere Marquette Railway Company and the Michigan Central Railroad Company. The tracks of the two companies cross at this point. In addition to the station building, there is an interlocking switch, water-tank, and coaling station. The only business done by the Pere Marquette Railway Company at Fargo consists of the exchange of carloads with the Michigan Central Railroad Company. The local business of the Pere Marquette Railway Company is inconsequential.

The application is opposed by the Michigan Central Railroad Company, and there are letters upon the file from the Clerk of the Township of Harwich and from the Post Office Department of Canada opposing the application.

The line now operated by the Michigan Central Railroad Company was originally constructed by the Canada Southern Railway Company, and the line now operated by the Pere Marquette Railway Company was originally constructed by the Erie and Huron Railway Company. In 1883 the Erie and Huron Railway Company obtained leave to cross the Canada Southern Railway at Fargo, and it was provided that this crossing should be at the expense of the Erie and Huron Railway Company. In 1889 an interlocking switch and signal system were installed by the Canada Southern Railway with the approval of the Railway Committee of the Privy Council.

In 1894 Fargo station was burned, and a new station was erected in its place under the terms of an agreement made between the railway companies, dated July 16, 1894. By the terms of this agreement the railway companies agreed to erect a new station upon the lands of both companies, at the junction of their lines at Fargo; the cost of the station was to be borne by both companies in equal shares and, when completed, was to be the joint property and to be occupied by both companies. The agreement provided for the appointment of an agent, who was to perform the duties on behalf of both companies, and each company was to pay one-half of the wages of the agent or other employees who

might be required. The railway companies were to provide separate waiting-rooms, which each was to furnish at its own expense. There are a number of other provisions in the agreement to which reference might be made, but the whole effect of the agreement is that the station should be jointly owned and operated by the two railway companies, and that the cost of operation and maintenance should be borne by the two companies in the manner set out in the said agreement. There is no provision in the agreement for its termination.

Fargo station has been operated by both companies for many years, but the local business on the Pere Marquette Railway at this point amounts to very little, and it now seeks to close Fargo station as an agency so far as its interests are concerned.

In my opinion, the Michigan Central Railroad Company is entitled to rights of seniority in respect of this station, but both companies are still bound by the terms of the above-recited agreement. I consider that the terms of this agreement should be maintained and that the station should continue to be operated under its terms as heretofore. For these reasons, I think this application should be dismissed.

June 11, 1936.

The Assistant Chief Commissioner concurred.

ORDER No. 53206

In the matter of the application of the Pere Marquette Railway Company, hereinafter called the "Applicant Company," under the provisions of General Order No. 119, for leave to remove the station agent at Fargo, Ontario.

File No. 4205.1053

FRIDAY, the 12th day of June, A.D. 1936.

Hon. HUGH GUTHRIE, *K.C., Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon hearing the application at the sittings of the Board held in Toronto, June 3, 1936, in the presence of counsel for the applicant company and the New York Central Railroad Company (Michigan Central Railroad Company), and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

Application of the Canadian National Railways for leave to abandon a portion of its L'Orignal Subdivision in the Province of Ontario between Hawkesbury (Mile 47·5) and Hurdman (Mile 104·1); and the Clarence Creek Spur between Rockland (Mile 0·0) and Clarence Creek (Mile 4·6)—a total distance of 61·2 miles.

File 39310.16

JUDGMENT

COMMISSIONER STONE:

The line between Hawkesbury and Hurdman, originally authorized by Dominion Act c. 50 of the statutes of 1895, incorporating the James Bay Railway Company, was constructed and completed by the Canadian Northern Ontario Railway Company, formerly called the James Bay Railway Company,

under the authority of chap. 72 of the statutes of 1907 (Dom.). It was opened for operation in 1909. In 1914 the Canadian Northern Ontario Railway Company became part of the Canadian Northern Railway System, the control of which was acquired by the Canadian Government in 1917, and which is now operated as part of the Canadian National Railways.

The Clarence Creek spur between Rockland and Clarence Creek was opened for operation in 1895, and is part of a line which formerly extended to what is now known as Limoges on the Glen Robertson to Ottawa line of the Canadian National Railways; but the portion from Clarence Creek to Limoges has been abandoned since 1923, and dismantled since 1927. This line was built under the charter granted the Prescott County Railway Company (50-51 Vic. (Can.) Chap. 82). The name of the company was changed to the Central Counties Railway Company in 1889. This line was operated under lease by the Canada Atlantic Railway Company until it was taken over by the Grand Trunk Railway Company of Canada in 1905. In 1923 the Grand Trunk Railway Company was amalgamated with the Canadian National Railway Company which assumed the obligations of the lease.

In November, 1930, the service in both directions between Hawkesbury and Hurdman consisted of a daily except Sunday motor car passenger train and a semi-weekly wayfreight train. In November, 1931, the passenger train was discontinued and the passenger traffic handled by a semi-weekly mixed train until June, 1932, when the passenger service was discontinued entirely. From that date until April, 1933, there was a semi-weekly wayfreight train, and subsequently, until the present time, a weekly wayfreight train was run in each direction.

On January 18, 1935, the Canadian National Railways made application for an order granting it leave to abandon operation of the above line under section 165A of the Railway Act, and section 2, subsection 3 of the Canadian National-Canadian Pacific Act of 1933, and all other appropriate statutory provisions. In support of this application statements were submitted setting forth a general description of the line, its special industrial relationship, its revenues and expenses for the year, October, 1930, to September, 1931, and for the calendar year of 1933, together with an analysis of its freight traffic for the same years.

Officers of the Engineering and Operating Departments of the Board were assigned to make an investigation and inspection; and the case was listed for hearing April 16, 1935. In compliance with various requests from representatives of the municipalities concerned, arrangements were finally made for the hearing, which was held at Ottawa on March 17, 1936, when counsel for the applicant and the municipalities, together with representatives of various interests concerned appeared before the Board.

The applicant submits that the line between Hawkesbury and Hurdman was laid in 1911 with new rails which are still in good condition; bridges are excellent; culverts are in good average condition; gravel is better than the average; ties are in good condition, and drainage good. The maximum grade eastbound is 0·5 per cent, and westbound 0·6 per cent with very little curvature, the maximum recorded being 4 degrees. (This statement agrees with the opinion of the Board's Engineer.)

In May, 1933, the wooden trestle (8 spans—86 feet) on the Rockland-Clarence Creek spur track at mileage 3·64 became unsafe for operation and service was suspended until August, 1934, when the track north of the trestle was put in condition to move traffic. In October, 1934, sufficient temporary repairs were made to the trestle to enable shipments of hay to be handled from Clarence Creek, and this segment of the line was kept open until May, 1935, when it was considered unsafe to continue operation and it was closed. On May 30, 1935, the applicant explained the circumstances and requested permission to discontinue all service between Rockland and Clarence Creek, as it would

entail an expenditure of $600 for tie replacement which was unwarranted in view of the small amount of business offering. This request was refused pending hearing on the application for abandonment. Temporary repairs were made to this line as far as mileage 3·64 and, in October, 1935, the line was reopened to mileage 3·64, but beyond this point it has remained closed, as the trestle is considered unsafe.

A summarized statement of car loadings, total revenue, out-of-pocket cost, together with result of system loss from operation from October, 1930, shows the following:—

	Total car movements	Total revenue	Out-of-pocket expenses only	System loss from operation
Oct., 1930-Sept., 1931	557	$57,448.00	$123,428.00	$65,980.00
Year 1932	304	36,525.00	58,026.00	21,501.00
Year 1933	187	18,026.00	53,652.00	35,625.00
Year 1934	266	22,639.00	35,071.00	12,432.00
Year 1935	440	39,596.00	42,668.00	3,072.00

Counsel for the applicant stated that it is obvious that the vital considerations in this matter are the operating results. The expenses shown are out-of-pocket expenses without charging any general superintendence to the line, and that the actual expenditure in 1933 was shown for maintenance as $17,334, but that was simply a case of skimping on the upkeep of the line which sooner or later must be faced, as the estimated cost for maintenance on a branch line was not less than $500 per mile, and while for the present year the railway was budgeting for not less than $20,000, this amount would have to be brought up to not less than $31,000 for normal maintenance.

It was also stated that the nature of the traffic produced on this line consisted principally of hay, oats and straw, and that the construction material handled was for highway improvements and that the highway paralleled the applicant's line almost within a stone's throw for 25 miles. That the character of this line has changed during the past six years—it has gone from a first class line into a secondary line at the very best. To the economic life of the districts served the railway has not in the past played a very vital part. The Canadian Pacific Railway parallels this line for several miles distant to the south, and also near the north shore of the Ottawa river over which several ferries cross serving the different municipalities on the applicant's line in summer, and by carriage over the ice in winter; and that motor bus and motor truck maintain regular service on the highway which is either decided upon or being contemplated as part of the Trans-Canada Highway; and that while abandonment may mean inconvenience in individual cases, there will be no serious impairment to the economic life, the question being the inconvenience of the individual against the very serious burden to the public.

In evidence submitted at the hearing by Mr. E. O. Bertrand, M.P., on behalf of the farmers and residents, reference was made to this line being a part of the connecting link between Ottawa and the Canadian National Railways' new terminal at Montreal, and emphasized the importance of retaining the line at present in view of anticipated completion of the tunnel terminal at Montreal. Orders were now being received for last year's crop. The line needed no rehabilitation only a fair maintenance. It was further stated that in 1932 an overhead bridge was constructed between L'Orignal and Hawkesbury eliminating a crossing at grade; and a diversion was also made between Wendover and Clarence which partially eliminated two other crossings. A portion of the cost of this work was paid by the Province and a portion by the local community. The operating loss in 1935 was considerably less than in former years.

Mr. A. Goulet, M.P., gave evidence on behalf of the farmers and business interests. He contended that the service of one round trip a week was of little use to the merchant who could not wait for his goods, and that a better service should be inaugurated; that the hay and grain dealers could show that owing to lack of markets there were thousands and thousands of tons in the two counties not shipped out, which would not be the case when the market became normal; that farmers should receive the encouragement necessary to enable them to carry on.

Mr. A. A. Smith, representing the Ontario Department of Highways, stated that "if there is a possibility of the railway abandoning that line it is of vital interest to us in that we believe we can build a highway on that line much cheaper than we can rebuild the present road." *Evid. Vol. 631, p. 1031.* He explained that Montreal being the largest city in Canada, and Ottawa the Capital city of the Dominion, it is anticipated that there will be commenced in the near future a highway in keeping with the importance of these two cities, and that a highway along the Canadian National between Plantagenet and Ottawa, about 25 miles, could be built forty per cent cheaper than the present highway, which is narrow in places and hard to maintain; but the portion of the railway between Plantagenet and Hawkesbury would not be required.

Several other witnesses appeared on behalf of the community interests served by the railway and were examined by counsel for the municipalities, who, in argument, emphasized the wonderful construction of the line and the necessity for continued operation. It was stated this line was built for a special purpose as a connecting link between the western section and Montreal, and while not paying at the moment the deficit had been declining year by year in a period of depression; that it would be cruelty to deprive the people of this means of communication who are anxious to co-operate and give the railway all their business; that no person wanted to do business by obsolete ferries some of which have already discontinued public service, neither do they desire to cross over the Ottawa river on the ice during the winter months; that it was considered the "Canadian National ought to go out and endeavour to get more business rather than fall into the line of least resistance when the occasion arises as to doing away with certain portions of its line," and that the authorities of which "are largely responsible for having endeavoured to strangulate this particular section and do away with it."

This line passes through a well-settled mixed farming country. Agriculture forms the principal industry, hay, oats, and straw being the most important commodities shipped. It is alleged thousands of tons will be shipped out when the markets become normal.

The population has slightly decreased within the several municipalities in recent years. Rockland appears to have been most affected on account of the closing of the lumber mills, with very little prospects in sight for a revival of this business. The Rockland Chemical Company anticipate a large export of "Alumina," one of their products from the use of clay, the manufacture of which would require inbound shipments of coal, salt, and miscellaneous freight; but this business appears to be in the prospective stage.

The line runs through a highly competitive area near the south shore of the Ottawa river and, as previously stated, is parallel to the prospective Trans-Canada Highway, over which much of the L.C.L. freight and various commodities are handled by motor truck, as well as a regular service for passenger traffic by motor bus, which service is very uncertain during the winter months.

The Canadian Pacific Railway south of this line varies in distance from 6 to 11 miles. The same company's line north of the river might not be seriously considered as a competitive line. There was no evidence submitted to show the amount of business diverted to that line or to water competition.

In 1930 and 1931 the Ontario Department of Highways constructed a diversion of the Montreal-Ottawa highway between Wendover and Clarence which partially eliminated two railway crossings. These crossings were not closed, but they are not used for through highway traffic. Near L'Orignal an overhead crossing on the Hawkesbury-Ottawa highway was completed in 1932 at a cost of $99,399.85, of which amount $34,789.85 was paid out of the Railway Grade Crossing Fund, the balance being paid by the Ontario Government.

It was emphasized at the hearing that in addition to the amount of public money already expended on the above improvements large sums of public money had also been expended in developing the Canadian National Montreal Terminals, and that as this portion of the railway was the northern outlet from Montreal to the west it might logically be considered necessary to continue service on the line in future as a part of that undertaking.

From Hawkesbury to Ottawa, via Hurdman, the distance is 59·1 miles. From Hawkesbury to Ottawa, via Glen Robertson, the distance is 83·8 miles, or a difference of 24·7 miles.

An analysis of the financial statement submitted by the applicant for October, 1930, to September, 1931, and for the calendar year of 1933, shows that the maintenance charges were computed on the average costs during the six years from 1928 to 1933 inclusive, which, in the other years shown were actual expenditures for maintenance of way and structures, without any charge for supervision. Counsel for the applicant explained that the actual maintenance expenditure in 1933 was $17,334 instead of the average recorded as $31,934. *Evid. Vol. 631, p. 1007.* He made it quite clear, however, that the amount expended was reduced to the minimum as the average cost to keep the line in serviceable condition would entail $500 per mile.

One of the features which appear impressive in the statements is the increase in revenue and the striking decrease in system operating loss covering the years 1933 to 1935 inclusive, wherein it will be noted that the operating loss decreased from $35,625 in 1933 to $3,072 in 1935, and the revenue increased from $18,026 in 1933 to $39,596 in 1935, whereas the out-of-pocket expenses are shown in 1933 as $53,652, and in 1935 $42,668, a difference of $10,984, while the operating losses decreased in the same period $32,553.

In view of what is before the Board in this case, I am of the opinion that the business offering between Rockland and Clarence Creek does not warrant the large expenditure which will be necessary to rehabilitate this segment, and this portion of the application should be granted.

Considering the financial improvement in operation during the past three years on that portion of the line between Hawkesbury and Hurdman, together with other features cited herein, I would dismiss this portion of the application, without prejudice to any future application the applicant may desire to make after the expiration of at least one year from the date order issues.

OTTAWA, June 12, 1936.

The Chief Commissioner, the Assistant Chief Commissioner, the Deputy Chief Commissioner, and Commissioner Stoneman concurred.

ORDER No. 53224

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 165A of the Railway Act, for approval of the abandonment of operation of a portion of the l'Orignal Subdivision, in the Province of Ontario, between Hawkesbury (Mile 47·5) and Hurdman (Mile 104·1); and the Clarence Creek Spur between Rockland (Mile 0·0) and Clarence Creek (Mile 4·6), a total distance of 61·2 miles.

File No. 39310.16

FRIDAY, the 12th day of June, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, March 17, 1936, in the presence of counsel for the applicants and interested municipalities, as well as the Chief Engineer for the Department of Highways of Ontario, and what was alleged,—

It is ordered:

1. That the application for approval of abandonment of operation of that portion of the applicants' l'Orignal Subdivisnon, in the province of Ontario, between Hawkesbury (Mile 47·5) and Hurdman (Mile 104·1) be, and it is hereby, refused; such refusal to be without prejudice to any future application the applicants may desire to make after the expiration of one year from the date of this order.

2. That the abandonment of operation of the applicants' Clarence Creek Spur between Rockland (Mile 0·0) and Clarence Creek (Mile 4·6), a distance of 4·6 miles, be, and it is hereby, approved.

H. GUTHRIE,
Chief Commissioner.

Application of the Stationers' Guild of Canada for the Inclusion of Rubber Bands in the Stationery List in Canadian Freight Classification No. 18.

File No. 33365.105.

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER:

This is an application to have rubber bands specifically provided for by a new item in the Canadian Freight Classification under the distinctive heading of "Stationery," reading, "Bands, Rubber (Elastic), in Boxes, L.C.L., first class," so as to permit them to obtain carload rating of fourth class under the terms of item 26, page 257, of the Classification, when small quantities are enclosed in mixed carloads with articles already included under the heading of "Stationery." At present, these rubber bands are covered by Item 5, page 242, of the Classification as "Rubber Goods, N.O.I.B.N.," under the distinctive heading "Rubber and Rubber Goods," at L.C.L. rating of first class and they are not granted a carload rating when enclosed with mixed carloads of articles in the Rubber and Rubber Goods list, when shipped for domestic consumption within Canada.

The applicants point out that rubber erasers are in the stationery list and allege that rubber bands, as well as erasers, are essentially stationery items, being sold wholesale and retail mainly by stationers. Applicants admit that

rubber bands are shipped only in small quantities and never in a carload quantity at one time, but point out that this is also the case with respect to many other articles, which they enumerated, already included under the heading of stationery. They, therefore, contend that rubber bands are as much a stationery item as rubber erasers and many other items in the said list and that they should, consequently, be permitted the same mixing privilege as is now accorded to these other articles. Applicants filed a copy of the "Report on the Rubber Industry in Canada, 1934," prepared by the Dominion Bureau of Statistics, where, on page eight, under the heading of "Other Products of the Rubber Goods Industry," there is shown, among many other entries, an item reading "Rubber Stationery Goods (including Erasers, Rubber Bands, etc.)." On the other hand, applicants also admit (p. 1563): "There is no doubt that rubber bands are used for lots of other things besides stationery."

On behalf of the railways, Chairman Ransom, of the Canadian Freight Association, submitted that this application is for the sole purpose of enabling applicants to obtain the benefit of a carload rating on a less than carload shipment, depriving the railways of revenue that they are properly entitled to. It was stated by Mr. Ransom that, while the revenue involved in the case of rubber bands was not of great importance, it was considered that the granting of this application would result in extended applications for carload ratings on many other articles which are now moving in much greater quantities than rubber bands, are of less value and not at present provided with a carload rating. Exhibit No. 3 was filed by Mr. Ransom, listing a large number of articles carried by many in the stationery trade which are not provided with a carload rating, which have moved for years and are moving to-day at the less than carload rates, many of which, it is stated, move in much greater volume than rubber bands.

It was also stated that the railways have had applications from the manufacturers of rubber goods to provide carload ratings on various articles of their manufacture, none of which moves in carload quantities, so as to permit their inclusion at carload rating in mixed cars with other rubber goods, thereby obtaining the benefit of a carload rating on a small quantity of valuable articles that never move in straight carloads. The articles cited were hot water bottles, ice bags, syringes, invalid rings, bathing caps, aprons, gloves, etc.

Exhibit No. 2, filed by Mr. Ransom, shows the first and fourth class rates from Toronto to representative points, also the average retail value of rubber bands at these points, with the wholesale price at Toronto. This information, with correction made of two or three trivial errors in the rates shown on the exhibit, is given below:—

From	To		Freight charges on 100 lbs.		Average value per 100 lbs.
Toronto..	Winnipeg..	1st	$2.67½	Retail	$150.00
		4th	1.38½	Wholesale	60.00
		Dif.	1.29		90.00
Toronto..	Montreal..	1st	.83	Retail	120.00
		4th	.52½	Wholesale	60.00
		Dif.	.30½		60.00
Toronto..	Calgary. .. .. / Edmonton.. ..	1st	4.53½	Retail	160.00
		4th	2.33½	Wholesale	60.00
		Dif.	2.20		100.00
Toronto..	Regina..	1st	3.58½	Retail	175.00
		4th	1.85½	Wholesale	60.00
		Dif.	1.73		115.00
Toronto..	Vancouver	1st	5.52½	Retail	100.00
		4th	2.81½	Wholesale	60.00
		Dif.	2.71		40.00

The contention of the railways is that the difference between the wholesale and retail values can well afford to take care of the difference between the present rate and the rate applied for. It will be observed that the granting of the application would make a reduction of ·3 cents per pound in the freight charges to Montreal on an article retailing there for $1.20 per pound; at Winnipeg, the retail value is $1.50 per pound and the reduction in freight charge would be 1·29 cents per pound; at Calgary and Edmonton, the retail value is $1.60 per pound and the reduction in freight charge would be 2·2 cents per pound; at Regina, the retail value is $1.75 per pound and the reduction in freight charge would be 1·73 cents per pound; at Vancouver, the retail value is $1 per pound and the reduction in freight charge would be 2·71 cents per pound. It is contended by the railways that the rating applied for would not increase the consumption of rubber bands, nor result in any reduction in the cost to the ultimate consumer, and it would seem apparent from these figures that the consumer would not be in any way affected, or benefited by the granting of this application. The applicants frankly stated that they have no complaint as to the reasonableness of the first class rate, nor do they claim there is any rate discrimination; the basis of their application is that these articles should be considered as stationery goods and given the same mixing privilege as the other articles already included in the stationery list. In this connection, reference may be again made to Exhibit No. 3, showing many other stationery articles not now included in the stationery list and not granted a carload rating.

With regard to the inclusion of rubber erasers in the stationery list, Mr. Ransom stated that, at the time Classification No. 17 was being prepared, the shippers requested the inclusion of this article owing to the fact that they were shipping large quantities of individual school boxes, containing pen, penholder, lead pencil, slate pencil, ruler and eraser, all of which are used by school children, and, as these articles were all included in one package, the railways granted the request of the shippers and added erasers to the stationery list.

From the information before us, it appears that, in fact, there is never a full carload of stationery shipped at one time by any individual shipper; that, with stationery, there may be shipped in mixed carloads numerous items of paper and paper articles, such as wrapping paper, wallpaper, toilet paper, paper towels, paper bags, paper pails or boxes, etc., and stationery has moved in mixed carloads where a considerable portion, and in some cases, the bulk, of the contents has consisted of these various paper articles; further, that such mixed carloads are made by a forwarding agency, which combines shipments from various shippers. This is confirmed by applicants' statement that "results show that, with the exception of carloads of paper, etc., no full carloads of stationery move from any one member, but, instead, all combine their shipments under a forwarding agency for shipment to Western Canada."

Applicants contended that if rubber bands can be considered as stationery, they can properly come under Item 25, page 257 of the Classification, as "Stationery, N.O.I.B.N." and, as such, receive the benefit of the carload rating under item 26, same page. On this point it may be stated that where articles handled by stationers, such as listed in Exhibit No. 3, are, as shown therein, specifically provided for in other portions of the Classification, they, obviously, do not come under the item of stationery, not otherwise indexed by name, because they are indexed elsewhere, as indicated, and rubber bands are covered and classified by item 5, page 242, as "Rubber Goods, N.O.I.B.N."; further, item 26, page 257, being indented under the distinctive heading of stationery, includes only the items under that distinctive heading which are not classified in carloads.

It seems unnecessary to here review in detail the various changes made in the stationery list in the Classification over a long period of years. The list, as it now appears in the Classification, was not drawn up or prescribed by the

Board. Speaking generally, the various trade lists in the Classification are the outcome of conferences and compromises between the shippers and railways, particularly at the time of the complete revision of the Classification, which was followed by the issuance of Canadian Freight Classification No. 17 (Volume 15, Board's Judgments and Orders, p. 177). Having been arrived at in the manner indicated, it follows that some apparent anomalies and inconsistencies may be found, such as, in the case of the stationery list, the exclusion of certain stationery articles which do not move in carload quantities, while some others, also not moving in carload quantities, are included. If the Board were to grant this application, it would be establishing a precedent, under which it is difficult to see how it could deny similar treatment with respect to a great many other articles in this and other trade lists, the ultimate result of which would be a reduction in the revenues of the railways that I do not consider they should be asked to sacrifice. There is nothing before us on this record indicating any hardship under the present conditions, or that the ratings shown are, in themselves, unreasonable or discriminatory.

In Volume 3, Board's Judgments and Orders, p. 93, dealing with an application of the Montreal Board of Trade for a carload rating on flannelette sheets, which was refused, the Board stated:—

> "The application for a carload rating clearly has in view mixed, not straight, carloads. Mr. Tilston (6385-6) 'If a carload rating was granted the traffic in straight carloads, or mixed carloads, would go as cotton piece goods.' It is much to be doubted whether this article can be shipped at present in solid carload lots, except, perhaps, an occasional car to a jobbing house."
>
> "The request is in the interest of the manufacturing and jobbing trades; and I would point out that Mr. Carpenter, who represents the Winnipeg jobbers and wholesalers, supports the application; reminding the Board, at the same time, of its refusal of the Winnipeg application for a carload rating on blankets, and on knitted wear as well. It might prove difficult for the Board consistently to repeat its refusal if, as I should expect they would, those applications were renewed in the event of the present one being successful."

In Volume 15, Board's Judgments and Orders, page 194, with respect to proposed Canadian Freight Classification No. 17, the Board refused to direct the inclusion of school books in the stationery list, so as to permit small quantities thereof to be shipped in mixed carloads of stationery, stating:—

> "Nothing has been adduced alleging that the present ratings on school books are in themselves unreasonable, and there is nothing on the record that would justify the Board in reducing the carload rating on school books, and including them in the stationery list, for the sole purpose of enabling the application of the carload rating on a less than carload shipment of school books."

In the same case, page 217, the Board refused to reduce the carload rating on rubber fruit jar rings, for the sole purpose of enabling their inclusion at 5th class rating in mixed carloads of groceries and stated:—

> "It may be here pointed out that to ignore the rating properly and reasonably applicable to an article considered by itself, and to provide a lower rating than would thereby be established on its own merits solely to permit the mixing privilege, would do violence to one of the most important principles of classification making, always hitherto held to be proper and consistent. To lower a rating, which is reasonable per se, for such a reason, would inevitably lead to the requirement that all articles which shippers' convenience would suggest be shipped together

should be given the same rating. Such a principle would be obviously unsound and absolutely demoralize and disrupt the structure of the classification. For this application to succeed, it would be necessary for the applicants to make out a case that the ratings on these articles are in themselves unreasonable; not merely that it is the desire of applicants to have a reduced rating provided simply for mixing purposes. Applicants not having met the burden of showing that the proposed ratings (which are a substantial reduction from those now in effect) are unreasonable, the Board would not be justified in directing that any change be made in what is proposed."

Upon careful consideration of the record in this case, I consider that this application should be dismissed.

OTTAWA, ONTARIO, June 13, 1936.

The Assistant Chief Commissioner concurred.

ORDER No. 53205

In the matter of the application of the Stationers' Guild of Canada for the inclusion of rubber bands in the stationery list in Canadian Freight Classification No. 18.

File No. 33365.105

FRIDAY, the 12th day of June, A.D. 1936.

Hon. HUGH GUTHRIE, *K.C., Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon hearing the application at the sittings of the Board held in Toronto, June 3, 1936, in the presence of representatives of the Stationers' Guild of Canada and the Canadian Freight Association, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

Application of the Corporation of the Township of Scarborough for an Order directing a grade separation where the Canadian National Railway intersects Victoria Park Avenue, which said avenue is the town line between the Corporations of the Township of Scarborough, City of Toronto, and Township of East York, in the County of York, Province of Ontario; And for the apportionment of the cost thereof.

(File No. 26765.152)

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER.

This is an application by the Corporation of the Township of Scarborough for an order directing grade separation where the Canadian National Railway intersects Victoria Park avenue upon the town line between the Corporation of the Township of Scarborough and the City of Toronto.

It appears that in the year 1927 a serious accident occurred at this crossing, and an application was made to the Board for protection, whereupon an

order was made for protection of the crossing by a watchman, and also providing that westbound trains should not pass over the crossing at a speed greater than ten miles per hour. At the time of this application the Corporation of the Township of East York, the Corporation of the City of Toronto, the Corporation of the Township of Scarborough and the Canadian National Railways were all added as interested parties, and the order made by the Board, No. 44172, directed the railway company to pay 55 per cent of the cost of protection, the City of Toronto to pay 15 per cent, the Township of East York to pay 15 per cent, and the Township of Scarborough to pay the remaining 15 per cent. This crossing has since the above date been protected as above mentioned, and the cost has been paid according to the figures above set out.

In the year 1930 the Township of Scarborough made an application to the Board for grade separation at this point. At that time the Canadian National Railway submitted that on account of its financial position it could not undertake the heavy expenditure which would be involved in grade separation at this crossing, and the application was not proceeded with.

On February 17, 1936, the Township of Scarborough made the present application to the Board for an order directing grade separation at the above crossing and in the said application alleged that the municipal boundary of the Township of Scarborough extended to the centre line of Victoria Park avenue, and that the municipal boundary of the City of Toronto extended from the said centre line of Victoria Park avenue westerly and northerly to the limit of the lands owned by the Canadian National Railways; that the Corporation of the Township of East York lies to the west of the centre line of Victoria Park avenue and extends northerly from the northerly limit of the City of Toronto. The application also alleges that the said crossing is dangerous to the travelling public using the highway, and that it is necessary for the proper protection of traffic over the said crossing that a grade separation be established at the intersection.

The travel upon Victoria Park avenue at the intersection of the railway is fairly heavy and eight tracks of the railway have to be crossed. The only protection afforded at the present time is by means of watchmen who carry a STOP sign and are on duty day and night. There is also the slow order upon westbound trains above referred to.

The engineer of the Township of Scarborough produced three traffic counts which had been taken in the years 1927, 1930 and 1936, respectively. For the year 1927 the traffic count represents seven days from April 25 to May 1, inclusive, and the average daily traffic over the crossing for these days is as follows:—

Horse vehicles	102·0
Motor cars and motor trucks	1,020·8
Bicycles	190·7
Pedestrians	856·0

For the year 1930 count was taken from August 29 to September 4, inclusive, and the daily average is as follows:—

Horse vehicles	52·4
Motor cars and motor trucks	2,394·2
Bicycles	162·3
Pedestrians	815·3

For the year 1936 count was taken from May 29 to June 1, inclusive, and the daily average is as follows:—

Horse vehicles	18·7
Motor cars and motor trucks	3,442·8
Bicycles	476·3
Pedestrians	1,120·8

It is to be noted that in the above traffic counts the heaviest traffic over the crossings is on Saturdays and Sundays, and this is largely made up of light and heavy passenger motor cars.

The engineer also submitted an estimate of the cost of the proposed work at $275,000, which figure included the sum of $25,000 for land damage. The other main items of expenditure were:—

Steel work	$44,000 00
Concrete	70,000 00
Excavation	20,000 00
Sewers	6,000 00
Pavements	22,000 00
Work in connection with tracks and trestles while work in progress	42,000 00
Sidewalks	3,000 00
Replacing telephone wires, lighting wires, and lighting of subway	5,000 00

Counsel for the applicant corporation stated that at the present time the applicant was not in a position to contribute anything towards the cost of the work, but he submitted that some arrangement might be made by the applicant with either the provincial Government or the Dominion Government for an advance to the Township of Scarborough for relief purposes which might be utilized upon this project, but he did not offer any definite proposal in this respect. He stated that in the Township of Scarborough and in the Township of East York there were, approximately, 20,000 people who were out of work for whom relief had to be provided, and he suggested that the proposed undertaking would provide a large amount of labour which might be taken care of by government grants for relief purposes.

Counsel for the City of Toronto took the position that the city was not an interested party under the provisions of the Railway Act, and alleged that the municipal boundaries of the City of Toronto extended only to the western limit of Victoria Park avenue and that no part of the said avenue was included in the boundaries of the City of Toronto. He submitted that the Board has no jurisdiction to order the City of Toronto to pay any part of the cost of grade separation in respect of this crossing.

The Board visited Victoria Park avenue in order to view the crossing and its surroundings. The impression left upon my mind from observations and inquiry at the crossing was that some additional protection should, if possible, be afforded to travellers upon the highway at this point. While it is true that a good view of the crossing and of the railway both easterly and westerly can be obtained by those travelling upon the highway either from the north or from the south, and that there is nothing to obstruct the view on either side for a considerable distance, yet it must be borne in mind that eight lines of tracks intersect the highway at this point, two of which are main line tracks for eastbound and westbound traffic and the remainder for switching movements. The only protection at the present time is a watchman at the crossing day and night, who carries the ordinary STOP sign throughout the day and a lantern at night. The watchman on duty at the time of the Board's visit stated that there had been no serious accident at the crossing since 1927. In my opinion the frequency of train movements over this crossing together with the heavy traffic upon the highway constitute a dangerous condition which might prove beyond the power of a single watchman to overcome. The erection of gates or wigwags on either side of the crossing might obviate some of the danger, but I am inclined to think that the true solution of the difficulty would be the construction of a subway which, as pointed out, would involve a heavy expenditure of money.

About three-quarter mile to the west of the crossing there is an overhead bridge which carries traffic over the Canadian National Railway tracks. There is another crossing three-quarter mile to the east where there is a subway to

carry traffic under the Canadian National Railway tracks, but it appears that the road to the east is not a paved road and there is not a great deal of traffic upon it. It is also contended that a good deal of traffic passes over Victoria Park avenue to avoid traffic lights which are placed on other roadways and which have a tendency to delay motor traffic.

In my opinion, no action can be taken at the present time in regard to grade separation at this crossing. The expenditure involved is very considerable and, if the City of Toronto is not liable for any contribution as is contended, the whole cost would have to be borne by the Townships of Scarborough and East York and the Canadian National Railways, apart from any contribution which might be made by the Board under the provisions of the Public Works Construction Act, or from the Railway Grade Crossing Fund. At the moment there is no assurance that any contribution can be made by either of the above townships by reason of the financial situation with which they are confronted. If these townships can secure a reasonable contribution for relief purposes, as suggested at the hearing, I think the application might be further considered. In such event the Board will further consider the objection of the City of Toronto that it is not a party interested within the terms of the Railway Act, and also the question of the jurisdiction of the Board as raised by counsel for the City of Toronto. The City of Toronto will be permitted at any subsequent hearing to place its objections more fully before the Board than was done at the hearing on June 3 last. The application may stand until definite information in regard to contributions by the townships is received by the Board. Copies of the interim finding should be transmitted forthwith to all parties concerned with the application.

June 13, 1936.

The Assistant Chief Commissioner concurred.

In the matter of the application of the Brandon, Saskatchewan & Hudson's Bay Ry. Co., under Section 165A of the Railway Act, for permission to abandon the operation of its line of railway from the town of Morden, Man., to the International Boundary.

File No.35629.

JUDGMENT

Commissioner Stoneman:

In his reasons for judgment refusing the Applicant Company's application for the approval of the abandonment of operation of its railway from the town of Morden, Man., to the International Boundary, Commissioner Norris, who wrote the judgment of the Board, said:—

> "If the Great Northern Railway were to discontinue its carrier services south of the boundary, that would be a very different matter, as there would then be no reason for continuing its lines into Canada, with no connection to the south." (43 C.R.C. 188, at p. 194.)

By certificate dated May 23, 1936, the Interstate Commerce Commission permitted the abandonment by the Great Northern Railway Company of what was known as the Walhalla segment of its line of railway in Pembina and Cavalier counties, North Dakota, connecting at the International Boundary with the Applicant Company's Morden line. A copy of the Commission's report and certificate permitting the abandonment in the United States was filed with the Board June 1, 1936.

Judgment on the revived application, which was heard at the sittings of the Board held in Winnipeg, March 5, 1936, was in the course of preparation by Commissioner Norris when he was taken ill. Referring to the statement in his previous judgment, to the effect that the situation would be different if the Great Northern discontinued operation south of the Boundary, the Commissioner expressed himself as follows:—

> "As the Interstate Commerce Commission has, under date of May 23, 1936, issued Certificate permitting the Great Northern Railway Company to abandon its connecting lines to the International Boundary, my reasons for the dismissal of the application no longer hold, and without the connection to the South the lines in Canada would be of no use in international traffic.
>
> "I am accordingly prepared to reverse my judgment in this matter and recommend that the application of the Brandon, Saskatchewan & Hudson's Bay Ry. Co. be granted."

While the Interstate Commerce Commission's permission to abandon operation of lines in the United States does not, in any way, control the action of this Board in dealing with applications for leave to abandon the operation of lines in Canada, the effect of such permission, resulting in the abandonment of the line to the south connecting at the boundary with the Canadian line, constitutes an important element to be considered by the Board in reaching its conclusion.

Under the circumstances of this case, I approve and concur in the views expressed by Mr. Commissioner Norris as quoted above, and I adopt them as my views in regard to this application.

In my opinion the application should be granted.

OTTAWA, June 19, 1936.

The Chief Commissioner and Commissioner Stone concurred.

ORDER No. 53231

In the matter of the applcation of the Brandon, Saskatchewan & Hudson's Bay Railway Company, hereinafter called the "Applicant Company," under Section 165A of the Railway Act, for approval of the abandonment of operation of its line of railway from the Town of Morden, in the Province of Manitoba, to the International Boundary, a distance of 14·66 miles.

File No. 35629.

FRIDAY, the 19th day of June, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Winnipeg, March 5, 1936, in the presence of Counsel for the Applicant Company, the McCabe Bros. Grain Company Limited, and the Town of Morden and Municipality of Stanley, and what was alleged; and upon reading the further submissions filed—

It is ordered: That the abandonment of operation of the Applicant Company's line of railway from the Town of Morden, in the Province of Manitoba, to the International Boundary, a distance of 14·66 miles be, and it is hereby, approved.

H. GUTHRIE,
Chief Commissioner.

Complaint of Ontario Flour Millers Association regarding Rates on Flour from Bay Ports to Montreal, Sorel and Quebec for Export.

File No. 39857

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER:

Written submissions were filed by complainants and by the railways in reply thereto and the matter was then listed for hearing at a sittings of the Board in Toronto on 3rd instant, in order that it might be more fully developed and additional representations received from the complainants and the railways. Except where otherwise indicated herein, all rates quoted are in cents per 100 pounds and are the export rates from the Bay Ports to Montreal, Sorel and Quebec.

The complaint relates to a special competitive rate established by the railways on wheat which is considerably below the rate contemporaneously in force on flour between the same points, which, it is claimed, makes it more difficult for the Ontario mills to compete in foreign markets against flour milled by foreign mills from Canadian wheat transported at low rates.

In a written submission, prior to the hearing, complainants asked that one of two things be done:—

> First—The export rate on flour milled from wheat ex Bay Ports be reduced to the equivalent of the export wheat rate from the Bay Ports or
>
> Second—The export wheat rate be raised to the equivalent of the export rate on flour milled from wheat ex Bay Ports.

The request above set out was modified at the hearing in a brief read by the Secretary of the Ontario Flour Millers Association, in which it was stated they felt "that there should be, at all times, a stated differential on flour as compared with wheat" and suggested that a fair differential would be 1 cent per 100 pounds. A different proposal, so far as concerns the differential between wheat and flour rates, was made by Mr. Soward of the Maple Leaf Milling Company, as a member of the association.

A brief explanation concerning the application of the rates seems essential to provide a background for a proper understanding of the situation. The wheat rate applies on shipments "ex-lake" from Bay Ports for through movement, without transit privilege, for export via Montreal, Sorel and Quebec. The rate at present being charged by the railways on this movement is 4¼ cents per bushel, or 7·08 cents per 100 pounds. The flour rate applies on grain "ex-lake" from the Bay Ports when milled, bagged, cleaned or clipped in transit at a milling point in Ontario (other than the port at which received) and the product reshipped from the milling point to Montreal, Sorel or Quebec for export. The current rate is 11½ cents, plus 1 cent for stop-off. When the grain, "ex-lake," is milled, bagged, cleaned or clipped at the Bay Port at which received, the rate is 12½ cents. When handled by rail, therefore, the Bay Port and interior Ontario millers are on a rate equality with respect to the export flour movement.

With regard to wheat, the railways stated that the rate established was necessary to meet water competition. They say they confirmed that the all-water lines were contracting to handle wheat, upon the opening of navigation, from the head of the lakes to Montreal for 6 cents per bushel and would, undoubtedly, name the same rate from the head of the lakes to Bay Ports as in force nearly all the season of 1935 of 2¼ cents per bushel, consequently, they could not charge any higher rate than 4¼ cents per bushel if they expected to handle any of the export grain through the Bay Ports and were also faced

with the likelihood that, even at that rate, they would not secure any large quantity, because this rate, added to that applicable from the head of the lakes to the Bay Ports, would make the through rate ½ cent per bushel higher than via the all-water route. The railways point out that they both have elevators at Bay Ports and have an interest in moving export wheat through them and the rate established did not place the grain in Bay Port elevators in an advantageous position. It is stated that the storage charge last winter at Bay Port elevators was one forty-fifth of a cent per bushel per day, the same as at the head of the lakes, with cheaper elevator storage at Montreal of one-ninetieth of a cent per bushel per day with a maximum charge from December 2 to April 30 of 1½ cents per bushel. The wheat from the head of the lakes to Montreal direct, via all-water routes, moved at a rate of 6 cents per bushel or less and the wheat from the head of the lakes to Montreal through Bay Port elevators paid at least 6 cents per bushel.

It was suggested by complainants in a written submission, prior to the hearing, that the railways established the rate "on the assumption that competition would come from the water route lines"; that the latter did not quote as low as 4¼ cents per bushel and do not participate, to any great extent, in the movement of wheat from Bay Ports to Montreal, Sorel and Quebec; further, that the rate was put in effect by the railways before water competition did exist, or, in other words, prior to the opening of navigation. The railways assert that the water lines were, for some time prior to the opening of navigation, contracting for the carriage of wheat from the head of the lakes for 6 cents per bushel and that boat tonnage had been offered for movement from Bay Ports to St. Lawrence ports at lower rates than that against which complaint is made. It is stated that the grain exporters, to enable them to make their contracts, required a specific date from which the rate quoted would be protected and, while it was not known when navigation would open, they were advised that the rate would be in effect from and after April 15. Witness for the Canadian Pacific Railway stated that the boats have taken wheat this season from the Bay Ports to Montreal at a rate less than 4¼ cents per bushel, but, as the boat lines do not publish their rates and are not subject to any rate control, it is difficult to furnish proof of the rate charged by them, but it is stated to be considerably below the rate established by the railways. Movements from Bay Ports, via boat, this season were given as follows:—

May 3	—SS. *Goderich,* from Goderich, Ont..	182,000 bushels
May 26	—(Steamer unnamed) from Goderich, Ont..	174,500 bushels
June 1	—SS. *Saracen,* from Owen Sound, Ont..	113,500 bushels
June 1	—SS. *Chicago,* from Owen Sound, Ont..	107,000 bushels

It was stated further that some 800,000 or 900,000 bushels have also been contracted for to move via water from Bay Ports to Montreal. There appears to be ample justification for accepting the statement that the rail rate of 4¼ cents per bushel from Bay Ports is necessary to meet water competition. Mr. Soward of the Maple Leaf Milling Company stated (p. 1584): "The through rate on wheat from *Fort William* to Montreal, to-day, is *4 to 4½ cents* per bushel." In Mr. Campbell's cross-examination by Mr. Walker, the following appears (p. 1580):—

> Q. If it (wheat) bore a higher rate than 4¼ cents, would it move at all in competition with grain at the head of the lakes at 6 cents?—A. I do not think it could move in competition with grain from the head of the lakes at the present time.
>
> Q. You do not think it could move in competition with grain from the head of the lakes?—A. No."

In the absence of the competition just referred to, the highest wheat rate which the railways could obtain from Bay Ports is 8·33 cents, or 5 cents per

bushel, which is the prevailing rail rate from Buffalo to New York, which, in turn, is regulated by water competition via the Erie canal. Obviously, the Buffalo-New York rate is the maximum that can be charged from Bay Ports if any export wheat is to move through them. Except in the case of the millers located at water points, the grain milled by Ontario millers from ex-lake wheat necessarily moves all rail and is, therefore, not subject to the same competitive conditions as exist in the case of the through wheat movement. The flour rate was before the Board for review early in 1922 (Applications of the Canadian National Millers' Association and the Dominion Millers' Association, Volume 12, Board's Judgments and Orders, p. 1). It was then 22 cents, with an intimation by the railways during the hearing that, upon the opening of navigation from Montreal, it would be reduced to 19½ cents, including the stop-off charge of 1 cent. The Board did not direct any lower rate on the record before it at that time. The rate to Saint John was also there in issue, as well as the question of the spread between the wheat and flour rates, which is raised in the present application. The applications were refused by the Board and an appeal therefrom made to His Excellency the Governor in Council, which was heard by a Sub-committee of the Privy Council and dismissed by Order in Council P.C. 2264, dated October 27, 1922.

The matter was again before the Board for consideration in 1924, as a result of submissions from some milling companies, and, after careful consideration, the Board directed the establishment of a rate of 17½ cents, including stop-off charge of 1 cent (Volume 14, Board's Judgments and Orders, p. 74). Since that time, the railways have voluntarily made further reductions in the rate, as shown in Exhibit No. 4 filed at the hearing, and the current rate, which was also in force during the summer season of 1935, is 11½ cents, plus 1 cent for stop-off.

Exhibit No. 4 shows that, out of the 11½ cent rate on flour, the railways make absorptions amounting to 2·43 cents, giving them a net rate of 9·07 cents; that the flour loads, on an average, 70,000 pounds per car, yielding net earning per car of $63.49. The average distance from the various Bay Ports to Montreal is 410 miles and the present net flour rate yields a ton mile earning of 4·42 mills and a car mile earning of 15·48 cents; to Sorel, the average distance is 457 miles with a ton mile earning of 3·97 mills and a car mile earning of 13·89 cents; to Quebec, the average distance is 572 miles with a ton mile earning of 3·17 mills and a car mile earning of 11·10 cents. Manifestly, these are extremely low earnings on the commodity in question. With respect to wheat, the gross rate is 7·08 cents, absorption is 2·17 cents and the net rate 4·91 cents, but the average loading is much heavier, namely, 120,000 pounds per car, yielding net earning per car of $58.92, so that it will be noted that the average net earning per car on flour is only $4.57 over the average net earning per car under the forced competitive rate on wheat.

The complainants state they are in no way questioning the right of the railways to meet water rates on wheat, as they fully realize the right and necessity of the railways obtaining a share of the export wheat from Bay Ports. They point out the importance of the milling industry in Canada, the large capital investment, the employment given and the necessity of engaging in an export flour business, with the result that anything that affects the export of flour is of vital interest to them, as well as to the railways and Canada as a whole. They further state that the lowering of transportation costs on wheat makes it increasingly difficult for Canadian mills to compete for export flour business; that "the lower the transportation costs on wheat, the lower the wheat cost of Canadian wheat to foreign mills." It is also obvious and, in fact, pointed out by Mr. Soward of the Maple Leaf Milling Company, that interior Ontario millers are at a decided disadvantage and handicap in competing for this export business with mills in Canada located where they have all the advantages of

water transportation. The Maple Leaf Milling Company, by reason of the location of their largest mill at Port Colborne, has the benefit of water transportation on their inward wheat and operate their own steamer for handling flour from Port Colborne to Montreal. The mills at Montreal bring their wheat all water from the head of the lakes and no rail transportation whatever is involved between these points.

The complainants referred only in very general terms to their difficulty in meeting competition with foreign millers, without furnishing any details whatever with respect thereto, such as a comparison of the total transportation cost in making delivery overseas, comparative milling costs and many other factors that, doubtless, enter into the matter, and, while one may sympathize with their position, these are, after all, questions arising outside of the scope of the Railway Act, which only empowers the Board to deal with the reasonableness of rates and questions of unjust discrimination concerning same. It is not the Board's function to go further and attempt to apply its ideas of the solution of these other economic developments, which are outside the realm of reasonable freight rates. The following discussion in cross-examination of Mr. Soward, at page 1587, is here apposite:—

> "Q. I was just going to follow that up a little bit. The first question of the Chairman was, assuming that these low water rates were not made by the railways, what position was the Ontario miller in; you said it was more or less hopeless.—A. Yes.
>
> Q. The question is not one of railway rates?—A. We maintained that from the start.
>
> Q. Then it cannot be due, from a rate making standpoint, it is a question of competition for flour markets that is taking place in this country?—A. Yes.
>
> Q. It is a question of policy rather than of flour milling in Ontario?—A. Yes.
>
> Q. As you frankly say, it is not a rate situation?—A. That is correct."

These Bay Port-Montreal rates, competition with foreign millers, etc., have been the subject of previous complaints to the Board. There was the complaint of the Ogilvie Flour Mills Company, dealt with in 1908 (Case No. 1819, File No. 5195). The question was very fully dealt with in 1922 upon the applications of the Canadian National Millers' Association and the Dominion Millers' Association (Volume 12, Board's Judgments and Orders, p. 1). It was there shown that flour and wheat rates not being subject to identical controlling factors, there have always been differences or spreads between them and these differences have been variable and irregular. The controlling factors were set out in the Board's Judgment. In the period from January 1, 1917, to January 1, 1922, the differences varied from 1 cent to 10·16 cents. In Exhibit No. 4, filed in this case, it is shown that during the past ten years the differences have varied from 2·31 cents to 9·15 cents and the present difference is 4·16 cents.

As I have already stated, this complaint must be considered and disposed of by determining whether the flour rate is unreasonable per se, or if there has been unjust discrimination created by the establishment of the competitive rate on wheat.

On the figures already set out herein showing the earnings of the railways for the movement of flour under the present rate, it is impossible to find that the flour rate is unreasonable; the rate, in fact, produces very scanty revenue for the transportation service rendered and is much below the rate prescribed by the Board as reasonable in 1924, supra. The complainants made no representations concerning the reasonableness of the rate per se.

It has not been proven that the Ontario millers have suffered any prejudice from the establishment of this competitive wheat rate by the railways. The

same, or lower, rates are available by the water carriers who are not subject to control or regulation as to rates and it is, therefore, simply a question whether or not the railways will participate, to some extent, in a movement which will take place in any event. The millers are in precisely the same position in the presence of the rail rate complained of as if that rate had never been established. That is to say, in the absence of publication of the competitive rate by the railways, complainants would have no grounds upon which to approach the Board alleging an unjust rate discrimination, but it is not apparent that their position would then be any different from what it is to-day. The situation complained of is created by the low rates via unregulated transportation agencies. The railways cannot rightly be charged with producing discrimination, unless it can be demonstrated that it was created by their action and that they could, by their own unaided acts, remove it. We have no such showing here.

For the reasons set out herein, I consider that this complaint must be dismissed.

Ottawa, Ontario, June 20, 1936.

The Assistant Chief Commissioner concurred.

ORDER No. 53230

In the matter of the complaint of the Ontario Flour Millers Association regarding rates on flour from bay ports to Montreal, Sorel, and Quebec for export.

File No. 39857

Friday, the 19th day of June, A.D. 1936.

Hon. Hugh Guthrie, K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*

Upon hearing the complaint at the sittings of the Board held at Toronto, June 3, 1936, in the presence of Counsel for the Canadian National Railways and the Canadian Pacific Railway Company and representatives of the Ontario Flour Millers Association, and what was alleged—

It is ordered: That the complaint be, and it is hereby, dismissed.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53172

In the matter of the application of the Great Northern Railway Company, hereinafter called the "Applicant Company," for permission to cancel on less than statutory notice all rates to and from points in Canada, Morden, Manitoba, and south, via the International Boundary.

File No. 27612.138

Saturday, the 6th day of June, A.D. 1936.

Hon. Hugh Guthrie, K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*

Upon its appearing that the Interstate Commerce Commission has permitted the abandonment of that portion of the applicant company's railway north of Walhalla, North Dakota, effective on ten days' notice,—

It is ordered: That the applicant company be, and it is hereby, permitted to cancel all rates, fares, and charges between Haskett, Glencross, and Morden, Manitoba, and points in the United States and Canada, applying via the international boundary, upon ten days' notice.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53177

In the matter of the application of the Canadian Passenger Association for approval of a form of release limiting liability in connection with the transportation of automobiles shipped in freight service on passenger transportation under what is termed the "Passenger With Automobile Plan"; and Order No. 53063, dated May 5, 1936.

File No. 39866.

SATURDAY, the 6th day of June, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon its appearing that railways other than the Canadian National and the Canadian Pacific Railway Companies may desire to handle automobiles under the said plan,—

It is ordered: That the said Order No. 53063, dated May 5, 1936, be, and it is hereby, amended by striking out the word "and" in the second line of the operative part of the order, and by adding after the words "Canadian Pacific Railway Company" the words "Dominion Atlantic, Nipissing Central, Quebec Central, and Toronto, Hamilton and Buffalo Railway Companies, and any other railway company subject to the jurisdiction of the Board which may elect to transport automobiles under the said 'Passenger With Automobile Plan.'"

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53178

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 8th day of June, A.D. 1936.

Hon. HUGH GUTHRIE, *K.C., Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 1007, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Tariff C.R.C. No. 1007, approved herein, is 29½ cents per 100 pounds; one and one-half cents per 100 pounds to be deducted account of water movement.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53187

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Martime Freight Rates Act; and the Order of the Board No. 52770, dated February 11, 1936, approving tolls published in Tariff C.R.C. No. 986, filed by the Dominion Atlantic Railway Company.

File No. 34822.13

TUESDAY, the 9th day of June, A.D. 1936.

Hon. HUGH GUTHRIE, *K.C., Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that errors were made by the Dominion Atlantic Railway Company in tariffs or divisions in connection with the said Tariff C.R.C. No. 986,—

It is ordered: That the said Order No. 52770, dated February 11, 1936, be, and it is hereby, amended as follows, namely:—

(*a*) by striking out the figures "18·2" and "22·7," to Berwick, N.S., in item 40, and substituting therefor the figures "17·6" and "22";

(*b*) by striking out the figures "12" and "15," to Halifax, N.S., in item 125, and substituting therefor the figures "8·8" and "11"; and

(*c*) by adding after item 135 and before item 145 the figures "140" and "11·2" and "13·7."

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53199

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 11th day of June, A.D. 1936.

Hon. HUGH GUTHRIE, *K.C., Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 1008, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 1008, approved herein, are as follows:—

	Cents per 100 pounds
Item 2	Halifax rates in effect prior to July 1, 1927
Item 3—	
Halifax, N.S. to Toronto, Ont.	33
Yarmouth, N.S. to Toronto, Ont.	34
Yarmouth, N.S. to Montreal, Que.	33

	Cents peer 100 pounds
Item 4—	
To	
Guelph, Ont.	45½
Simcoe, Ont	45
Toronto, Ont.	40½
Item 5	41½

One and one-half cents per 100 pounds to be deducted from all normal tolls account of water movement.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53200

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 11th day of June, A.D. 1936.

Hon. HUGH GUTHRIE, *K.C., Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 1009, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 1009, approved herein, are as follows:—

	Cents per 100 pounds	
	Lake and rail	All rail
Sault Ste. Marie, Ont.	...	54½
Fort William, Ont.	44½	54
Port Arthur, Ont.		
West Fort William, Ont.		

One and one-half cents per 100 pounds to be deducted account of water movement.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53201

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

THURSDAY, the 11th day of June, A.D. 1936.

Hon. HUGH GUTHRIE, *K.C., Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 746, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Temiscouata Railway Company's proportion of tariff tolls to be reported as shown below.

2. And the Board hereby certifies that the Temiscouata Railway Company's proportion of normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 746, approved herein, is as shown below:—

	Cents per 100 pounds					
	Groups					
	A		B		C	
To	Tariff	Normal	Tariff	Normal	Tariff	Normal
Crabtree, Que.					5	6½
Cornwall, Ont.					4	5
Donnacona, Que.					5	6½
Grand'Mere, Que.					5	6½
Georgetown, Ont.					4½	5½
Hawkesbury, Ont.					5	6½
La Tuque, Que.	5	6½	7	9	..	..
Limoilou Jct., Que.					4	5
Merritton, Ont.					4½	5½
Ottawa, Ont.					5½	7
Thorold, Ont.					4½	5½
Trois Rivières, Que.					..	..
Shawinigan Falls, Que.					5	6½
Windsor Mills, Que.					4½	5½

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53202

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

FRIDAY, the 12th day of June, A.D. 1936.

Hon. HUGH GUTHRIE, *K.C., Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders: That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement 57 to Tariff C.R.C. No. E1234.
Supplement 23 to Tariff C.R.C. No. E1906.
Supplement 29 to Tariff C.R.C. No. E1911.
Supplement 60 to Tariff C.R.C. No. E1804.
Supplement 35 to Tariff C.R.C. No. E1829.
Supplement 18 to Tariff C.R.C. No. E2047.
Supplement 19 to Tariff C.R.C. No. E2248.
Supplement 20 to Tariff C.R.C. No. E2248.
Supplement 1 to Tariff C.R.C. No. E2408.
Tariff C.R.C. No. E2426.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53203

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

FRIDAY, the 12th day of June, A.D. 1936.

Hon. HUGH GUTHRIE, *K.C., Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 22 of Supplement No. 18 to Tariff C.R.C. No. E4368, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under Supplement No. 18 to Tariff C.R.C. No. E4368, approved herein, is 85½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53204

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

FRIDAY, the 12th day of June, A.D. 1936.

Hon. HUGH GUTHRIE, *K.C., Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in item 620 of 2nd revised page 36 of Tariff C.R.C. No. E4757, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said 2nd revised page 36 of Tariff C.R.C. No. E4757, approved herein, are as follows:—

From Aylesford, N.S. to	Cents per 100 pounds
Hamilton, Ont.	77½
London, Ont.	84½
Ottawa, Ont.	70½
Toronto, Ont.	75½

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53216

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

TUESDAY, the 16th day of June, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published to Kingston, Ont., in item 475B and to Edmundston, N.B., in item 675A of Supplement No. 8 to Tariff C.R.C. No. E4775, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 8 to Tariff C.R.C. No. E4775, approved herein, are as follows:—

	Cents per 100 pounds
Item 475B	32
" 675A	29½

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 53217

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 16th day of June, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 1010, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 1010, approved herein, are as follows:—

	Cents per 100 pounds
1 From Halifax, N.S.	43½
" Yarmouth, N.S.	45
2	Halifax rate in effect prior to July 1, 1927
3 Halifax, N.S., to	
Toronto, Ont.	33
Kingston, Ont.	34½
Yarmouth, N.S., to	
Toronto, Ont.	34
Montreal, Que	33

	Cents per 100 pounds
4 To Guelph, Ont.	45½
Simcoe, Ont.	45
Toronto, Ont.	40½
5	41½

One and one-half cents per 100 pounds to be deducted from all normal tolls account of water movement.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 53218

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.15

TUESDAY, the 16th day of June, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 6 to Tariff C.R.C. No. 194, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 6 to Tariff C.R.C. No. 194, approved herein, are as follows:—

To	Cents per 2,000 lbs.
Coleraine, Que.	3.50
Thetford Mines, Que.	3.55
East Broughton, Que.	3.55

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 53219

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.15

TUESDAY, the 16th day of June, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published to Edmundston, N.B., in Supplement No. 7 to Tariff C.R.C. No. 194, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 7 to Tariff C.R.C. No. 194, approved herein, are as follows:—

	Cents per 2,000 pounds
Furtherance	125
Local	140

S. J. McLEAN,
Assistant Chief Commissioner.

GENERAL ORDER No. 555

In the matter of freight tariffs filed with the Board covering traffic carried between points in the United States through Canada, also between points in the United States and Canada.

File No. 39422

THURSDAY, the 18th day of June, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Whereas, by General Orders No. 535, dated April 9, 1935, and No. 536, dated April 15, 1935, and for the reasons therein set out, as well as in the Board's judgment dated April 16, 1935, the Board authorized that the rates and charges in freight tariffs applying on traffic carried between points in the United States through Canada, also the proportions of through rates and charges on traffic between the United States and Canada, accruing within Canada, be increased to the extent that the through rates and charges would conform to the increases authorized by the order of the Interstate Commerce Commission dated March 26, 1935, which were to expire June 30, 1936, and described as Emergency Charges;

And whereas the Interstate Commerce Commission, by order dated June 9, 1936, has approved for continued application until December 31, 1936, such increased rates and charges, or so-called emergency charges, with certain exceptions and modifications, as set out in its report of the same date;

And whereas the Canadian railways have applied to have such rates and charges also continued until December 31, 1936, with respect to traffic covered by General Orders Nos. 535 and 536, in order to maintain the existing relationships in the rates on international traffic with the basis applicable within the United States and to enable the Canadian carriers to share in the emergency charges and to observe the continuity of joint through rates from points in the United States to points in Canada and vice versa,—

It is ordered: That tariffs applying on the traffic hereinbefore described may be supplemented, effective upon one day's notice, to permit the continuance of such increased rates and charges until December 31, 1936, subject to the exceptions and modifications set out in the report of the Interstate Commerce Commission dated June 9, 1936.

H. GUTHRIE,
Chief Commissioner,

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR APRIL, 1936

Railway accidents	165,	with 7 persons killed and	170 injured
Railway accidents at highway crossings	15,	with 5 persons killed and	19 injured
	180	12	189

	Killed	Injured
Passengers	..	18
Employees	..	136
Others	12	35
	12	189

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents

Prince Edward Island

1 Automobile—Approached at high speed; ran onto crossing in front of train. License PEI 5408.

New Brunswick

1 Automobile—Auto ran into pilot of engine. License N.B. F-5071.

Quebec

1 Pedestrian—Ran across track into side of engine.

Ontario

5 Automobile—Drove onto crossing in front of train. Licences, Ontario, NE-657, C. Woolston, Brighton, Ont.; Ont. T-763, T. Williams, London, Ont.; Ont. BC-163, L. Grinham, R.R. No. 2, Stevensville, Ont.; Ont. FH-936, H. Hunt, Bracebridge, Ont.; Ont. H-476, J. Miller, St. Thomas, Ont.

1 Automobile—Driver failed to see or hear train. License Ont. NR-770, J. Westlake, Beeton, Ont.

1 Automobile—Ran into side of train. License T-6909, R. Shellington, (no address given).

1 Auto truck—Driver failed to see engine in time to avoid being struck. License Ont. 33-184, C. B. Lawson, Brockville.

1 Pedestrian—Failed to observe approaching train, struck.

Manitoba

1 Automobile—Drove onto crossing in front of train. License Man. 41-445.

1 Pedestrian—Ran in front of engine; suicide.

Alberta

1 Auto truck—Drove onto crossing in front of train. License Alta. B-3-342.

Of the 15 accidents at highway crossings, 2 occurred at protected crossings, and 13 at unprotected crossings. Ten of the accidents occurred during the daylight hours and 5 at night.

Ottawa, June 22, 1936.

JUL 17 1936

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXVI | Ottawa, July 15, 1936 | No. 9

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Application of the Canadian National Railways for an Order which will enable Applicant Company to replace the gates by wig-wags and bells at the highway crossing west of Lorne Park Station, Ontario.

(File No. 9437.1094)

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER:

The crossing which is the subject of this application has for a number of years been protected by gates and by watchmen. The present application by the railway company is for leave to remove the gates and watchmen and to substitute therefor bells and wig-wags on either side of the railway. This crossing is over the main line of the Canadian National Railway between Toronto and Hamilton. It is a double-track line and many fast trains pass over it. No accident has occurred at the crossing since the gates were established.

Counsel for the railway company stated that the annual cost for wages and maintenance was $3,330, of which the railway company pays 75 per cent and the township of Toronto 25 per cent. To establish double bells and wig-wags at this crossing would cost $3,300, and the subsequent maintenance would be approximately $250 annually. Should a change from gates to bells and wig-wags be authorized, the railway company would make an annual saving of about $2,200, and the township would save annually $729.

While it is true that on July 8, 1927, the township council formally agreed to the change from gates to bells and wig-wags, provided a clear vision were given for at least 100 feet to all southbound traffic, on August 6, 1935, the township council sent a formal notice to the Board rescinding and withdrawing the resolution passed by the council in 1927. If there was any uncertainty in regard to the meaning of the second resolution passed by the council, the position of the council was definitely stated by Mr. Jackson who appeared on its behalf when the application was heard in Toronto. When the resolution was passed by the council in 1927, two out of five members voted against it, while the council was unanimous in passing the resolution of 1935, and Mr. Jackson stated very clearly that the council was definitely opposed to a change from gates to bells and wig-wags. Mr. Jackson further stated that prior to the installation of the gates there had been a warning bell at this crossing, but that during the time when the warning bell was in operation several accidents had

occurred including one fatality. He also stated that the people in the neighbourhood had become accustomed to the gates and to the watchmen; also that a large school had been erected to the north of the crossing and that a great many school children, who lived on the south side of the track, crossed the railway at this point four times a day. A large number of residents of the district have submitted petitions to the Board strongly objecting to the removal of the gates and the establishment of bells and wig-wags. A resolution has also been received from the Lorne Park Branch of the Women's Institute strongly opposing any change.

While I realize that modern practice both here and in the United States is rather favourable to a change from gates to bells and wig-wags, from the viewpoint both of protection and expense, and also that this Board has authorized a number of such changes as mentioned in the judgment of the Assistant Chief Commissioner, I would hesitate to make a change in this particular instance. I had the advantage of viewing this crossing with other members of the Board. In my opinion, satisfactory protection is now afforded and, as two local residents pointed out to me, the school children have become accustomed to the protection which now exists and their parents consider that the presence of the watchmen, who are constantly in the tower at this crossing and who are careful to warn the children of approaching trains, renders the present crossing protection very satisfactory. The school-house is on the north of the railway, while most of the residential property is on the south side of the tracks, so that a large number of school children are compelled to cross and re-cross at this point daily. It is true that a change from gates to bells and wig-wags would save a considerable amount of money annually both to the railway company and the township, but in spite of this saving the township council has definitely opposed the change, and judging from the petitions received by the Board the residents of the neighbourhood seem to be fairly unanimous in their opposition to any change.

Under these circumstances, I would not disturb the present arrangement at this crossing. If circumstances change in the future, another application might be made to the Board.

For the above reasons, I regret that I find myself in disagreement with the views of the Assistant Chief Commissioner in respect to this application.

June 29, 1936.

Commissioner Norris concurred.

Application of the Canadian National Railways for an Order which would enable Applicant Company to replace the gates by wigwags and bells at highway crossing west of Lorne Park Station, Ontario.

(File 9437.1094)

JUDGMENT

McLean, Assistant Chief Commissioner:

Application is made by the Canadian National Railways for an order to enable the applicant company to replace the gates by wigwags and bells at highway crossing at West Lorne Park Station, Ontario.

Counsel for the railway stated that the gate protection in existence involved wages amounting to $3,194, and maintenance of $136, making a total of $3,330, for which, under the existing order, the railway assumes 75 per cent and the township 25 per cent. It is estimated that the expense of double wigwags and bells would be about $3,300. The annual maintenance is computed at $250.

In 1935 the railway took up with the municipality the question of the latter agreeing to the removal of the gates. On July 9, 1935, the clerk of the township wrote to the railway, saying,—

"I am instructed to inform you that council will agree to the change from the gates to the wigwag signal at the Lorne Park crossing providing your company will arrange to have a clear vision given for at least one hundred feet to all southbound traffic."

The application was then made and the railway agreed to make such clearance as the Board might consider necessary, and at such cost as the Board might direct. This was followed by a communication from the township, dated August 6, 1935, containing a resolution of the council, which reads as follows:—

"This council strongly objects to the application to the Board of Railway Commissioners in regard to leaving the improved sight lines to the discretion of the Board and to pay any part of the cost, and wish to by this resolution rescind and withdraw the resolution referred to in the application and send a copy to the Railway Board."

Counsel for Lorne Park states that there has been a reduction in the number of trains. In 1927, the trains moving numbered 93 and now there are 53. At the same time vehicular traffic increased from 242 to 503.

The railway in its application stresses the savings which can be effected, it being alleged at the same time that the bells and wigwags will afford protection and efficiency equal to that afforded by the gates. While the question of cost is an important factor, the predominant matter must be the question of safety.

Various applications have come before the Board in the last six or seven years requesting permission to replace existing gates by bells and wigwags.

In the latter part of 1928 the question came up of the substitution at certain crossings on the Canadian Pacific Railway, at Chatham, Ont., of bells and wigwags for gates already in place. By Order 42004, of January 2, 1929, in the case of King street, permission was given to make a trial substitution good for one year, it being provided that, unless the city of Chatham was satisfied with the installation of the bells and wigwags, the railway company should revert to the original gate protection. By Order 49488, a similar provision is made in regard to Adelaide street.

Some correspondence was exchanged towards the end of the trial period. On February 3, 1931, however, the matter was taken up by the City Council, and it was decided, as set out, that the bells and wigwags were operating with reasonable satisfaction. The council approved of the continuance of the bell and wigwag system subject to such adjustment as may appear to be necessary to insure public safety from time to time. No further representations in regard to these installations are to be found in the records of the Board.

In the year 1933 various applications were received from the Michigan Central Railroad and the Père Marquette Railroad in regard to the substitution of bells and wigwags for gates. The conditions at the crossings in question were carefully considered. It was submitted that the Michigan Central Railroad was operating high speed trains; that there was a large volume of pedestrian and vehicular traffic crossing at the points in question, including therein a considerable number of school children. A daily average of 45 school children using the crossing at King street was set out in the evidence. (Appln. of M.C.R.R. Co—New York Central R.R. Co., lessee—and the P.M. Ry. Co., for authority to remove the crossing gates at King street, Highgate, Ont., 23 Board's Judgments and Orders, p. 309.) The situation was complicated by the tracks of the M.C.R. being parallel with those of the P.M.R. at various points.

Evidence was submitted by Mr. Charles E. Hill, General Safety Agent for the New York Central Lines, pointing out the increase in the use of visual signs for protective purposes. Mr. Hill referred to experience on the New York Central Lines, having in mind that the M.C.R. was under the same control.

There has been a steady increase in the United States in the use of visual signs. The Signal Section of the American Railway Association in its bulletin

of February, 1935, gives the figures covering the years from 1925 to 1933. These figures are based on the annual report of the Interstate Commerce Commission.

In regard to gates, it is shown that a number of crossings protected during the period in question by gates had decreased 1,839, while in the case of watchmen there had been a decrease of 1,894, and in the case of automatic devices there had been an increase of 7,076. Computations based on the Board's records in connection with the Grade Crossing Fund expenditures show that the average cost of seventy installations covering the years 1926 to 1936 for single bell and wigwag automatic devices on the Canadian National Railways gives a figure of $1,400, while the average cost of forty-six installations of single bell and wigwag automatic protection devices on the Canadian Pacific Railway within the same period was $1,498. The cost of maintaining a bell and wigwag is about one-fifteenth of the maintenance cost of a crossing gate. The average cost of maintenance for single installations of bells and wigwags in Canada, taken from the costs assessed against the Ontario Department of Highways by the railways for the years 1932, 1933, 1934 and 1935, runs from $250 to $300 per year. The cost of a crossing gate is approximately $4,000. Cost of operation for twenty-four hour service by watchmen at thirty-nine cents an hour amounts to $3,416.40. Further cost of maintenance and fuel for watchmen amounts to $480, making an annual maintenance charge for crossing gates of $3,896.40. Annual cost of protection by watchmen amounts to $3,491.40, covering an item of wages for twenty-four hour service of $3,416.40 and $75 for fuel.

Crossings on the Michigan Central Railroad to which reference has been made are located at,—

Talbot street, Essex, Ont.
Queen street, Tilbury, Ont.
Furnival road, Rodney, Ont.
King street, Highgate, Ont.
Main street, Dutton, Ont.
Graham street, West Lorne, Ont.

Furnival road to Graham street, inclusive, are also crossings on the Père Marquette Railroad.

An application was received from the Canadian Pacific Railway asking for permission to substitute bells and wigwags for gates at Scugog street, Bowmanville, Ontario. This was granted in 1934.

There also have been findings that the bell and wigwag is as satisfactory from a safety standpoint as protection by watchmen. See in this connection application of the Canadian Pacific Railway regarding installation of bell and wigwag in lieu of watchmen at Portland street crossing, Saint John, N.B.; also application by the same railway for installation of bell and wigwag in lieu of watchmen at Bentley street crossing, Saint John, N.B.

An analysis of the methods of protection shows an increase in use of bells and wigwags and other visual signs in the field of protection. Where electric bells were used there has been a steady movement to improve the situation by installing bells and wigwags or other visual signs. This has been noticeable both in Canada and the United States in the last seven or eight years, and the change has been coincident with the adoption of standards. The bell and wigwag has the advantage of being more economical than the gate. This by itself would not be conclusive, but in addition to the railway economies of the bell operation, a study of the situation shows that with reasonable care the bell and wigwag affords a very safe form of protection.

I am of the opinion that the application for bells and wigwags in place of gates be allowed at the crossing in question, the cost of construction and maintenance of the same to be on the railway; the Board's Engineering Department to check up on the sight lines and see if an improvement of the view can be effected.

June 26, 1936.

ORDER No. 53270

In the matter of the Order of the Board No. 24343, dated October 19, 1915, directing the Grand Trunk Railway Company to install gates at the crossing of the highway immediately west of Lorne Park Station, in the Province of Ontario, to be operated by day and night watchmen;

And in the matter of the application of the Canadian National Railways for leave to replace the gates by wigwags and bells.

File No. 9437.1094

FRIDAY, the 3rd day of July, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the matter at the sittings of the Board held at Toronto, June 3, 1936, in the presence of counsel for the Canadian National Railways and the township of Toronto, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53239

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for permission to cancel, on less than statutory notice, collection and delivery service at Agincourt, in the Province of Ontario.

File No. 27612.139

WEDNESDAY, the 24th day of June, A.D. 1936.

Hon. HUGH GUTHRIE, K.C. *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that the applicant company is unable to arrange with carters at Agincourt for delivery of less than carload traffic,—

It is ordered: That the applicant company be, and it is hereby, permitted to file an amendment to Tariff C.R.C. No. E. 4746, upon three days' notice, cancelling Agincourt, Ontario, as a station at which collection and/or delivery service is performed.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53240

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 26th day of June, A.D. 1936.

Hon. HUGH GUTHRIE, K.C. *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published on less than carloads of dry and smoked fish in item 35 of Supplement No. 43 to Tariff C.R.C. No. 851, filed by the Dominion

Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 43 to Tariff C.R.C. No. 851, approved herein, is 30½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53241

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 26th day of June, A.D. 1936.

Hon. HUGH GUTHRIE, K.C. *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 1 to Tariff C.R.C. No. 1006, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 1 to Tariff C.R.C. No. 1006, approved herein, are as follows:—

To	Cents per 100 pounds
Kentville, N.S.	29
Yarmouth, N.S.	34½

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53251

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

TUESDAY, the 30th day of June, A.D. 1936.

Hon. HUGH GUTHRIE, K.C. *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders: That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act, namely:—

Supplement	No.	58	to	Tariff	C.R.C.	No.	E-1234
"	"	118	"	"	"	"	E-1235
"	"	25	"	"	"	"	E-1737
"	"	61	"	"	"	"	E-1804
"	"	24	"	"	"	"	E-1957
"	"	2	"	"	"	"	E-2381

Tariff C.R.C. No. E-2428.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53252

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

TUESDAY, the 30th day of June, A.D. 1936.

Hon. HUGH GUTHRIE, K.C. *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in item 206, and for distances over 150 miles in item 217A, of Supplement No. 33 to Tariff C.R.C. No. E-4322, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 33 to Tariff C.R.C. No. E-4322, approved herein, are as follows:—

Item	To	Cents per 100 pounds
206	Montreal, Que.	24
	Toronto, Ont.	31
217A	Over 150 to 175 miles	11½
	Over 175 to 200 miles	12

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53253

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 30th day of June, A.D. 1936.

Hon. HUGH GUTHRIE, K.C. *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 461 of Supplement No. 2 to Tariff C.R.C. No. 1006, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 2 to Tariff C.R.C. No. 1006, approved herein, is 18 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53267

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 3rd day of July, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in item 1 of Tariff C.R.C. No. 1008, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item 1 of Tariff C.R.C. No. 1008, approved herein, are as follows:—

From	*Cents per 100 pounds*
Halifax, N.S.	43½
Yarmouth, N.S.	45

One and one-half cents per 100 pounds to be deducted account of water movement.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53271

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 4th day of July, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the toll published in item 30 of Supplement No. 6 and item 30A of Supplement No. 7, to Tariff C.R.C. No. 860, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to be reported at 10 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 6 and Supplement No. 7 to Tariff C.R.C. No. 860, approved herein, is 12 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

SUMMARIES OF ORDERS ISSUED BY THE BOARD OF RAILWAY COMMISSIONERS

53165. June 1—Authorizing C.N. Rys. to remove caretaker at Newtonville Station, Ont.

53166. June 1—Approving Supp. 3 to agreement between Bell Telephone Co., and Woodbridge & Vaughan Telephone Co., Ltd.

53167. June 2—Authorizing C.N. Rys. to reconstruct highway bridge between Secs. 10 and 11-12—17 W1M., Man.

53168. June 2—Extending until July 1, 1936, time within which C.P.R. may construct spur to serve Trump Oil Co., Ltd., at Trump, Man.

53169. June 4—Declaring C.N. Rys. crossing of James Street, St. Marys, Ont., protected to Board's satisfaction.

53170. May 19—Relieving C.P.R. from maintaining cattle guards at 18 crossings on its Peterboro Subd'n, Ont.

53171. May 26—Directing C.N. Rys. to install bell and wigwag at crossing in Lot 27, Con. X, Tp. Ferris, Dist. Nipissing, Ont.

53172. June 6—Permitting Great Northern Ry. to cancel all rates, fares and charges between Haskett, Glencross, and Morden, Man., and points in U.S. and Canada, applying via International Boundary.

53173. June 5—Approving proposed revision of mechanical interlocker at crossing of C.P.R. Lac du Bonnet Branch by C.N. Rys. Victoria Beach Subd'n at mileage 8·21, Parish of St. Pauls, Man.

53174. June 5—Declaring C.N. Rys. crossing, first north of Coniston Station, Ont., protected to Board's satisfaction.

53175. June 5—Approving traffic agreement between Bell Telephone Co. and Temiskaming & Northern Ontario Railway Commission.

53176. June 6—Declaring C.N. Rys. crossing, first east of Bon Conseil Station, Que., protected to Board's satisfaction.

53177. June 6—Amending Order 53063, May 5, 1936, by striking out word "and" in 2nd line of operative part, and by adding after the words "Canadian Pacific Railway Company" the words "Dominion Atlantic, Nipissing Central, Quebec Central, and Toronto, Hamilton & Buffalo Railway Companies, and any other railway company subject to Board's jurisdiction which may elect to transport automobiles under 'Passenger With Automobile Plan.'"

53178. June 8—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, toll published in Tariff C.R.C. No. 1007 filed by Dominion Atlantic Ry. under sec. 9.

53179. June 6—Authorizing C.N. Rys. to remove station agent at Victoria Road, Ont. (Caretaker to be appointed.)

53180. June 8—Authorizing C.P.R. to construct spur to serve Union Stockyards at mile 2·2 Wilkie Subd'n, Sask.

53181. June 9—Approving supps. 5 and 6 to agreement between Bell Telephone Co., and Stroud Telephone Co., Ltd.

53182. June 9—Approving service station contract between Bell Telephone Co. and Arundel Telephone Co.

53183. June 9—Approving Supp. 1 to service station contract between Bell Telephone Co. and Ovila Piche Private Line.

53184. June 9—Rescinding Order 52490, November 27, 1935, authorizing C.P.R. to construct undercrossing immediately west of Maunsell, Alta.

53185. June 9—Rescinding Order 52496, November 27, 1935, authorizing Alberta Dep't Public Works to construct overhead crossing of C.P.R. one-half mile west of Lundbreck, Alta.

53186. June 5—Declaring C.N. Rys. crossing of Sherbrooke Highway, 3 miles south of Granby, Que., protected to Board's satisfaction.

53187. June 9—Amending Order 52770, February 11, 1936, by striking out figures "18·2" and "22·7" to Berwick, N.S., in item 40 and substituting therefor the figures "17·6" and "22"; by striking out figures "12" and "15" to Halifax, in item 125 and substituting therefor figures "8·8" and "11"; and by adding after item 135 and before item 145 the figures "140" and "11·2" and "13·7."

53188. June 5—Recommending to Governor in Council for sanction by-law 98 of C.P.R. providing for certain changes in General Train and Interlocking Rules (Special Instruction "E").

53189. June 6—Authorizing C.N. Rys. to construct crossing at Destor, Co. of Abitibi, Que.

53190. June 18—Authorizing C.N. Rys. to construct overhead crossing at Clericy, Co. Abitibi, Que.

53191. June 11—Authorizing C.N. Rys. to construct highway crossing at Davangus, Co. Abitibi, Que.

53192. June 6—Authorizing C.N. Rys. to construct highway crossing near Destor, Que., Co. Abitibi.

53193. June 2—Amending Order 52197, August 29, 1935, by striking out words "This Order to become effective not later than November 1, 1936" at end of Order, and substituting therefor the words "Six of such plows to be equipped as provided herein by November 1, 1936, six more by November 1, 1937, and the remainder by November 1, 1938"—Operation of wedge plows by C.N. Rys.

53194. June 10—Declaring C.N. Rys. crossing of Angeline Street, between Cons. 4 and 5, Tp. Ops, Co. Victoria, Ont., protected to Board's satisfaction.

53195. June 5—Recommending to Governor in Council for sanction by-law of Quebec Central Ry. dated September 3, 1934, amending General Train and Interlocking Rules (Special Instruction "E").

53196. June 10—Authorizing C.P.R. to reconstruct bridge No. 129·5 Coquihalla Subd'n, B.C.

53197. June 10—Authorizing Sask. Dep't Highways to construct highway crossing over C.P.R. in Sec. 2-58-14 W3M., Sask.

53198. June 10—Authorizing N.S. Dep't Highways to open up Hubley's and Robinson's crossings at St. Margaret's Bay Road, Co. Halifax, across C.N. Rys. to enable department to pave main road between the two crossings without interference from road traffic.

53199. June 11—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls pub-
53200. lished in tariffs filed by Dominion Atlantic Ry. under sec. 9.

53201. June 11—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in tariff C.R.C. No. 746 filed by Temiscouata Ry. under sec. 9.

53202. June 12—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in tariffs filed by C.N. Rys. under sec. 3.

53203. June 12—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls pub-
53204. lished in tariffs and supplements filed by C.P.R. under sec. 9.

53205. June 12—Refusing application of Stationers' Guild of Canada for inclusion of rubber bands in stationery list in Canadian Freight Classification No. 18.

53206. June 12—Refusing application Pere Marquette Ry. to remove station agent at Fargo, Ont.

53207. June 11—Declaring that items of maintenance such as removing snow and ice, whitewashing of cattle guards, etc., form part of crossing to be maintained, and that under senior and junior rule cost of such maintenance at crossing constructed by Alberta Dep't of Public Works over E.D. & B.C. Ry. must be borne and paid by Mun. District of Ray No. 549, Alta.

53208. June 12—Amending Order 51863, April 17, 1935, by striking out words "provided a watchman is maintained during race meets between hours of 12 o'clock noon and 8 p.m." in second paragraph of operative part of Order; and by striking out words "so long as a watchman is maintained thereat during race meets, between the hours of 12 o'clock noon and 8 p.m." at end of Order.—C.N. Rys. crossing of Kingsbury Avenue, Tp. Etobicoke, Ont.

53209. June 12—Approving location of C.N. Rys. station to be erected near Craig Siding, Man.

53210. June 12—Approving proposed changes to interlocking plant at crossing of C.N. Rys. by C.P.R. at St. Johns, Que.

53211. June 12—Authorizing C.P.R. to construct spur to serve Standard Brands Limited, at LaSalle, Que.

53212. June 12—Approving proposed layout and location of C.N. Rys. station and freight shed to be erected at St. Isidore, Que.

53213. June 13—Authorizing C.P.R. to construct bridge over the Red Deer river at East Coulee, Alta.

53214. June 13—Directing C.N. Rys. to install a second bell and wigwag and add a wigwag to existing bell at crossing of Argyle street, east of station at Caledonia, Ont.

53214. June 15—Extending for 30 days time for making application to Board for leave to appeal from Order 53012, approving abandonment of C.N. Rys.' Nicolet Subd'n between St. Leonard Junction and Nicolet, Que., and that C.N. Rys. suspend any action pending hearing of such application.

53216. June 16—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published to Kingston, Ont., in item 475B and Edmundston, N.B., in item 675A of Supp. 8 to tariff C.R.C. No. E-4775 filed by C.P.R. under sec. 9.

53217. June 16—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in tariff C.R.C. No. 1010, filed by Dominion Atlantic Ry. under sec. 9.

53218. June 16—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls pub-
53219. lished in Supp. 6 and Supp. 7 to tariff C.R.C. No. 194, filed by Fredericton & Grand Lake Coal & Ry. under sec. 9.

53220. June 16—Declaring C.N. Rys. crossing, first east of St. Damien Station, Que., protected to Board's satisfaction.
53221. June 16—Declaring C.N. Rys. crossing, third west of Sebringville Station, Ont., protected to Board's satisfaction.
53222. June 16—Declaring London & Port Stanley Ry. crossing, immediately north of Stop 22, Tp. Yarmouth, Co. Elgin, Ont., protected to Board's satisfaction.
53223. June 17—Authorizing C.P.R. to use and operate bridge No. 7·18 Saint John Subd'n N.B.
53224. June 12—Refusing application of C.N. Rys. for approval of abandonment of its l'Orignal Subd'n, between Hawkesbury and Hurdman, Ont., and approving abandonment of Clarence Creek Spur between Rockland and Clarence Creek.
53225. June 18—Declaring C.N. Rys. crossing, second west of Iroquois, Ont., protected to Board's satisfaction.
53226. June 18—Authorizing Alberta Dep't Public Works to construct crossing of C.N. Rys. in SE. ¼ sec. 4-46-23, W5M., Alta.
53227. June 18—Authorizing Lethbridge Collieries, Ltd., to construct four entries under C.P.R. in NW. ¼ sec. 35-8-22, W4M., Alta.
53228. June 18—Declaring C.N. Rys. crossing of Victoria Avenue, Fort William, Ont., satisfactorily protected so long as speed limitation of ten miles an hour is in effect.
53229. June 18—Authorizing Dominion Dep't Public Works to construct crossing of C.N. Rys. on road leading to new Government Dock at Hudson, mileage 12·50, Quibell Subd'n, Ont.
53230. June 19—Dismissing complaint Ontario Flour Millers' Ass'n regarding rates on flour from Bay ports to Montreal, Sorel and Quebec for export.
53231. June 19—Approving abandonment of operation of Brandon, Saskatchewan, Hudson Bay Ry. from Morden, Man., to International Boundary.
53232. June 22—Authorizing C.P.R. to construct wye tracks at Raymond, Alta.
53233. June 19—Approving location and dimensions of freight and passenger shelter to be erected by C.N. Rys. at Garson, Ont.
53234. June 20—Declaring C.P.R. crossing 1·2 miles north of Midhurst, Ont., protected to Board's satisfaction.
53235. June 25—Extending until July 10, 1936, time within which to apply for leave to appeal from General Order No. 554, *re* Commercial Travellers' privileges.
53236. June 22—Relieving C.N. Rys. from fencing along left side of right of way between mileage 52·5 and 53·6 Grand Falls Subd'n, N.B.
53237. June 24—Authorizing C.N. Rys. to remove station agent at Bluevale, Ont. (Caretaker to be appointed.)
53238. June 25—Extending until August 1, 1936, time within which C.N. Rys. may install bell and wigwag at crossing near west end of bridge over Matapedia river at Ste. Florence, Que.
53239. June 24—Permitting C.P.R. to file amendment to tariff C.R.C. No. E.4746, upon 3 days' notice, cancelling Agincourt, Ont., as a station at which collection and/or delivery service is performed.
53240. June 26—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in supplements to tariffs filed by Dominion Atlantic Ry. under sec. 9.
53241.
53242. June 27—Declaring New York Central Ry. crossing of Hincks street, St. Thomas, Ont., protected to Board's satisfaction so long as speed limitation of ten miles an hour is in effect.
53243. June 26—Extending until August 1, 1936, time within which C.N. Rys. may install bell and wigwag at crossing of Station Road, at Bic, Que.
53244. June 26—Extending until August 1, 1936, time within which C.N. Rys. may install bell and wigwag at crossing of Highway No. 11 at Jacquet River, N.B.
53245. June 26—Extending until August 1, 1936, time within which C.N. Rys. may install bell and wigwag at crossing of Highway No. 11 at Charlo, N.B.
53246. June 26—Authorizing Alberta Dep't Public Works to construct crossing of Northern Alberta Rys. in NE. ¼ sec. 25-72-5, W5M., near Mitsue, Alta.
53247. June 26—Authorizing C.P.R. to operate over Toronto Harbour Comm'rs' spur serving Link-Belt Ltd., near Leslie street, Toronto, Ont.
53248. June 24—Directing that farm crossing over C.P.R. at mileage 37·51 Webbwood Subd'n, Ont., be made a regular highway crossing.
53249. June 16—Approving supp. 2 to agreement between Bell Telephone Co. and La Compagnie de Telephone St. Paul de Chester.
53250. June 16—Approving supp. 1 to agreement between Bell Telephone Co. and La Compagnie de Telephone Local de Ham Nord.
53251 June 30—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in tariffs filed by C.N. Rys. under sec. 3.
53252 June 30—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in item 206, and for distances over 150 miles in item 217A of Supp. 33 to tariff C.R.C. No. E-4322 filed by C.P.R. under sec. 9.

53253. June 30—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, toll published in item 461 of Supp. 2 to tariff C.R.C. No. 1006 filed by Dominion Atlantic Ry. under sec. 9.

53254. June 29—Approving Supp. 2 to agreement between Bell Telephone Co. and La Compagnie de Telephone de Notre Dame de Ham.

53255. June 29—Approving Supp. 1 to agreement between Bell Telephone Co. and M. J. O'Brien (Calabogie & Renfrew Telephone Ass'n).

53256. June 29—Approving Supp. 1 to agreement between Bell Telephone Co. and La Compagnie de Telephone de la ville d'Arthabaska.

53257. June 27—Authorizing C.N. Rys. to remove station agent at Milnet, Ont.

53258. June 29—Extending until August 1, 1936, time within which C.N. Rys. may install bell and wigwag at crossing 2·2 miles east of Spruce Grove, Alta.

53259. June 29—Authorizing C.N. Rys. to construct siding across Wicksteed ave., Soudan ave. (not open), and Vanderhof ave. (not open), at Leaside, Ont.

53260. June 29—Authorizing Tp. Fenelon to construct crossing of C.N. Rys. on Lot 25, Con. 10, Tp. Fenelon, Co. Victoria, Ont.

53261. June 29—Declaring Lake Erie & Northern Ry. crossing known as Maple Grove crossing, Tp. Oakland, Ont., protected to Board's satisfaction.

53262. June 27—Extending until August 1, 1936, time within which C.N. Rys. may install bells and wigwags at crossing of 115th ave., Edmonton, Alta.

53263. June 29—Extending until August 1, 1936, time within which C.N. Rys. may install bell and wigwag at crossing of Dutch Village road, Halifax, N.S.

53264. June 29—Authorizing C.N. Rys. to dismantle gates at crossing of Montreuil ave., East Windsor, Ont., make alterations to existing facilities, lower watchman's cabin and set it on ground, and maintain watch between 7 a.m. and 11 p.m., trains passing over crossing between 11 p.m. and 7 a.m. to be limited to ten miles an hour and flagged over crossing by member of train crew.

53265. June 27—Requiring C.N. Rys. to maintain day and night watchman at crossing of Pillette road, East Windsor, Ont.

53266. July 3—Authorizing C.P.R. to shorten southbound ringing circuit of bell at crossing of Port Burwell road, Port Burwell, Ont., from 2,410 to 1,400 feet.

53267. July 3—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in item 1 of tariff C.R.C. No. 1008 filed by Dominion Atlantic Ry. under sec. 9.

53268. July 3—Directing that no movements be made by locomotives on shop tracks over crossing of William street by C.N. Rys. in city of Brockville, Ont.

53269. July 2—Authorizing C.N. Rys. to extend spur at mileage 52·0 Renfrew Subd'n, across road allowance between Cons. 3 and 4, Tp. Horton, for purpose of working Horton ballast pit, providing necessary authority is obtained from Catherine Laventure estate to cross land north of highway.

53270. July 3—Refusing application of C.N. Rys. to replace gates by wigwags and bells at crossing immediately west of Lorn Park Station, Ont.

53271. July 4—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, toll published in item 30, Supp. 6, and item 30A, Supp. 7 to tariff C.R.C. No. 860 filed by Dominion Atlantic Ry. under sec. 9.

53272. July 4—Authorizing C.N. Rys. to construct crossing of Municipal road between Lots 607 and 609, Parish of Ste. Agathe, Mun. of Ritchot, near Glenlea, Man.

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The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXVI | Ottawa, August 1, 1936 | No. 10

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ORDER No. 53279

In the matter of the application of the Brandon, Saskatchewan and Hudson's Bay Railway Company, hereinafter called the "Applicant Company," under Section 330 of the Railway Act, for approval of Supplement No. 2 to its Standard Freight Tariff C.R.C. No. 1737.

File No. 35629

TUESDAY, the 7th day of July, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant company's Supplement No. 2 to its Standard Freight Tariff C.R.C. No. 1737 be, and it is hereby, approved; the said supplement, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette.*

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53287

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

MONDAY, the 13th day of July, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

That the tolls published in Supplement No. 34 to Tariff C.R.C. No. E-4322, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 34 to Tariff C.R.C. No. E-4322, approved herein, are as follows:—

Item		Cents per 100 pounds
206-A	To Montreal, Que.	24
	Toronto, Ont.	31
	Miles	
225	Not over 10	5½
	11 to 20	7
	21 to 30	8
	31 to 50	9
	51 to 70	9½
	71 to 100	12
	101 to 125	12½
	126 to 150	13

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53288

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

MONDAY, the 13th day of July, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published from Fairville, N.B., in item 240 of 4th revised page 23 of Tariff C.R.C. No. E-4757, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said 4th revised page 23 of Tariff C.R.C. No. E-4757, approved herein, is $1.70 per ton of 2,000 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53289

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.23

MONDAY, the 13th day of July, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 40, filed by the Canada and Gulf Terminal Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 40, approved herein, is 25 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

GENERAL ORDER NO. 556

In the Matter of the application of Shipping Containers, Limited, of Montreal, Quebec, for permission to use, for the shipment of Strike-Anywhere Matches over railways in Canada, a special container, in addition to those permitted by General Order No. 512, dated April 4, 1933, as amended by General Orders Nos. 518, 523, and 542, dated respectively October 10, 1933, December 7, 1933, and September 12, 1935:

File No. 1717.1.3.

TUESDAY, the 7th day of July, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon consideration of the submissions filed in support of the application, and the report and recommendation of the Assistant Chief Traffic Officer of the Board; and upon the consent of the Bureau of Explosives and the Railway Association of Canada, filed,—

It is Ordered:

1. That, effective July 15, 1936, corrugated boxes, complying with Shipping Container Specifications Nos. 24-A, 24-B, 24-C, 24-D, and 24-E, published in Agent W. S. Topping's Tariff C.R.C. No. 2, on file with the Board, may be used for shipping classes of freight permitted by the said tariff to be shipped in such containers over railways in Canada subject to the jurisdiction of the Board.

2. That the provisions of Specification No. 24-B, referred to above, be extended to include, for manufacture and use in the Dominion of Canada for the carriage of Strike-Anywhere Matches only, a box of special construction, which must comply with all the provisions of Specification No. 24-B, except as follows:—

(*a*) Boxes must be: One-piece type; or, three-piece type, without recessed end or ends, complying with paragraphs 14, 15, 16, and 20 of Shipping Container Specification No. 23-A.

(*b*) Adjoining edges of body must overlap at least 1½ inches, and be stitched to form joint. Stitches must be at not over 2½-inch intervals, and within one inch of end of joint. Joints over 18 inches long must have two stitches at each end, parallel to each other and not over one-half inch apart. Liner and liner pads not required.

(*c*) For containers not over 38 pounds gross weight, the board must be: 275-pound test board, double-faced B-flute type, with at least 50 corrugations per foot; facings at least 0·016 inch thick; corrugated sheet at least 0·009 inch thick.

(*d*) For containers not over 45 pounds gross weight, the board must be: 350-pound test board, double-faced B-flute type, with at least 50 corrugations per foot; facings at least 0·020 inch thick; corrugated sheet at least 0·009 inch thick.

(*e*) Specification marking in rectangle on box must be C.R.C. 24-B-38 or C.R.C. 24-B-45, respectively.

3. That the said General Orders No. 512, dated April 4, 1933; No. 518, dated October 10, 1933; No. 523, dated December 7, 1933; and No. 542, dated September 12, 1935, be, and they are hereby, rescinded.

H. GUTHRIE,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MAY, 1936

Railway accidents	177, with	15 persons killed and	176 injured.
Railway accidents at highway crossings	18, with	8 persons killed and	23 injured.
	195	23	199

	Killed	Injured
Passengers	—	31
Employees	1	128
Others	22	40
	23	199

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents

New Brunswick

1 Automobile—Excessive speed of auto. Licence N.B. M-3491.

Quebec

2 Automobile—Auto driver failed to stop for crossing. Licences Que. H-4460, Que. 67937.

2 Auto truck—Auto truck driver failed to stop for crossing. Licences Que. 12710, Que. F-14611.

Ontario

3 Pedestrian—Walked onto crossing in front of train and was struck.

1 Automobile—Auto stalled on track and struck by train. Licence Ont. DM-749. H. Charlton, 12 Meda St., St. Thomas.

1 Automobile—Auto driver failed to regard wigwag warning. Licence Ont. OD-36. Thomas Whiteside (no address).

1 Automobile—Collision between railway motor inspection car and auto. Licence Ont. DY-684. Miss A. Thiel, Mitchell, Ont.

1 Automobile—Auto ran into side of train. Licence Ont. MC-162. Basil Ault (no address given).

2 Auto truck—Drove onto crossing in front of train. Licences Ont. 61127-C, Ont. 68703-C, John Barreault, Warren, Ont; Eddy Hounslow, Brantford, Ont.

1 Auto truck—Auto driver focusing his attention on train in one direction and was struck by train from opposite direction. Licence Ont. 32499-C, J. W. Craig, Belleville Road, Napanee, Ont.

Manitoba

1 Automobile—Auto driver failed to observe stop sign and stop before attempting to cross tracks. Licence Man. 29-135.

1 Pedestrian—Attempted to board moving train at crossing.

Alberta

1 Auto truck—Occupants of truck failed to observe approaching train. Licence Alta. B-2024.

Of the eighteen accidents at highway crossings, five occurred at protected crossings and thirteen at unprotected crossings. Thirteen of the accidents occurred during the daylight hours and five at night.

Ottawa, July 17, 1936.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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ORDER No. 53313

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

THURSDAY, the 23rd day of July, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

It is ordered: That the tolls published in the following tariffs filed by the Canadian National Railways under Section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act, namely:—

Supplement No. 59 to Tariff C.R.C. No. E-1234
Supplement No. 60 to Tariff C.R.C. No. E-1244
Supplement No. 61 to Tariff C.R.C. No. E-1244
Supplement No. 41 to Tariff C.R.C. No. E-1247
Supplement No. 27 to Tariff C.R.C. No. E-1253
Supplement No. 26 to Tariff C.R.C. No. E-1737
Supplement No. 62 to Tariff C.R.C. No. E-1804
Supplement No. 36 to Tariff C.R.C. No. E-1829
Supplement No. 24 to Tariff C.R.C. No. E-1906
Supplement No. 30 to Tariff C.R.C. No. E-1911
Supplement No. 27 to Tariff C.R.C. No. E-1974
Supplement No. 23 to Tariff C.R.C. No. E-2070
Supplement No. 4 to Tariff C.R.C. No. E-2311
Tariff C.R.C. No. E-2432
Tariff C.R.C. No. E-2434
Tariff C.R.C. No. E-2437

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53323

In the matter of the application of the New York Central Railroad Company, hereinafter called the "Applicant Company," under Section 330 of the Railway Act, for approval of its Standard Mileage Freight Tariff, C.R.C. No. 3614, containing standard mileage class rates between stations on the Adirondack Division in Canada and between stations on the Ottawa Division in Canada, on file with the Board under file No. 1067.

THURSDAY, the 30th day of July, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board—

It is ordered: That the Applicant Company's standard Mileage Freight Tariff, C.R.C. No. 3614, on file with the Board under file No. 1067, be, and it is hereby, approved; the said tariff, with a reference to this Order, to be published in at least two consecutive weekly issues of The Canada Gazette.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53325

In the matter of the application of the Express Traffic Association of Canada, on behalf of express companies subject to the jurisdiction of the Board, for approval of proposed Supplement No. 20 to Tariff C.R.C. No. E. T. 694. covering amendments to the Regulations for the Transportation by Express of acids, inflammables, oxidibing substances, samples of explosives, etc., on file with the Board under file No. 1717·12.

THURSDAY, the 30th day of July, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon reading what is filed in support of the application and the consents of the Montreal and Toronto Boards of Trade and the Canadian Manufacturers' Association; and upon the report and recommendation of the Assistant Chief Traffic Officer of the Board—

It is ordered: That the said Supplement No. 20 to Tariff C.R.C. No. E. T. 694, covering amendments to the Regulations for the Transportation by Express of acids, inflammables, oxidizing substances, samples of explosives, etc., on file with the Board under file No. 1717.12, be, and it is hereby, approved.

H. GUTHRIE,
Chief Commissioner.

SUMMARIES OF ORDERS ISSUED BY THE BOARD OF RAILWAY COMMISSIONERS

53273 July 4—Relieving C.P.R. from maintaining cattle guards at five crossings on its Windsor Subd'n, Ont.

53274 July 6—Authorizing Mun, of Shuniah, Ont., to construct highway crossing over C.P.R. at mileage 102 Nipigon Subd'n, at Loon, Ont.

53275 July 6—Directing C. N. Rys. to install bell and wigwag at main track crossing of Lansdowne street, East Ferris, Ont.

53276 July 6—Directing C.N. Rys. to install double bells and wigwags at crossing of Cadillac street, Montreal, Que.

53277 July 6—Declaring C.N. Rys. crossing, first west of Napanee Station, Ont., protected to Board's satisfaction.

53278 July 8—Authorizing C.P.R. to construct extension to spur to serve Taber Canning Co., Ltd., at Taber, Alta.

53279 July 7—Approving Supp. 2 to Brandon, Sask. & H.B. Ry's Standard Freight Tariff C.R.C. No. 1737.

53280 July 8—Authorizing C.N. Rys. to construct private spur to serve Rayner Construc- Co., Ltd., across Maple avenue, Sussex, N.B.

53281 July 7—Authorizing C.N. Rys. to construct crossing on east and west road allowance between NW¼ Sec. 36-36-19 and SW¼ Sec. 1-37-19 W. 2 M., near Englefield, Sask.

53282 July 10—Extending until July 27, 1936, time for making application for leave to appeal to Supreme Court from Board's General Order No. 554 *re* Commercial Travellers' privileges.

53283 July 10—Approving plan showing work proposed by C.N. Rys. at St. Jean-Chrysostome Station, Que.

53284 July 11—Extending until December 31, 1936, time within which C.P.R. may complete spur to serve certain coal lands of Company south of Red Deer River near East Coulee, Alta.

53285 July 10—Authorizing N.B. Dep't Public Works to construct diversion of highway near Dickie Station, N.B., and close crossings at Dickie Station and at Station No. 51-93.

53286 July 14—Authorizing Canadian Oil Companies, Ltd., to install four 12,000-gallon horizontal storage tanks opposite mileage 68·44 Dundas Subd'n of C.N. Rys., at Brantford, Ont.

53287

53288 July 13—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in tariffs and supplements filed by C.P.R. under sec. 9.

53289 July 13—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, toll published in tariff C.R.C. No. 40 filed by Canada & Gulf Terminal Ry., under sec. 9.

53290 July 13—Authorizing C.P.R. to use and operate bridge over highway at mileage 13·87 St. Stephen Subd'n, N.B.

53291 July 13—Authorizing C.N. Rys. to construct private siding to serve Beach Furniture Co., across Ninth street, Cornwall, Ont.

53292 July 13—Declaring C.P.R. crossing, first east of Fredericton Station, N.B., protected to Board's satisfaction so long as present limitation of 10 miles an hour is in effect.

53293 July 15—Authorizing C.N. Rys. to remove station agent at St. Agnes de Dundee, Que., (Caretaker to be appointed).

53294 July 14—Declaring C.P.R. crossing of Fourth avenue, Claresholm, Alta., protected to Board's satisfaction.

53295 July 14—Authorizing City of North Bay, Ont., to construct highway crossing over C.P.R. at mileage 1·78 Cartier Subd'n.

53296 July 13—Authorizing C.N. Rys. to remove station agent at Burgessville, Ont. (Caretaker to be appointed).

53297 July 14—Authorizing C.P.R. to convert distant signals Nos. 1 and 2 at crossing of C.P.R. and C.N. Rys. joint spur at Tillsonburg, Ont., to fixed signals.

53298 July 16—Directing that plan and profile dated New Glasgrow, N.S., June 20, 1936, be substituted for plan and profile dated November 7, 1935, *re* C.N. Rys. spur serving Leonard Brothers, Limited, across Commercial street, North Sydney, N.S.

53299 July 16—Declaring C.N. Rys. crossing on Lacroix street, Chatham, Ont., protected to Board's satisfaction, provided engines and cars moving on sidings crossing Lacroix street are protected by flagman, and no car placed within 300 feet of crossing.

53300 July 18—Authorizing C.P.R. and C.N. Rys. to operate over crossing at Drummondville, Que., without stopping.

53301 July 17—Authorizing C.P.R. to remove station agent at Beaver Bank, N.S. (Caretaker to be appointed).

53302 July 18—Approving Supp. 4 to agreement between Bell Telephone Co., and Clarence Telephone Co., Ltd.
53303 July 18—Authorizing C.P.R. to construct spur to serve Coldwater Crushed Stone, Ltd., at Medonte, Ont.
53304 July 18—Declaring C.N. Rys. crossing, first east of Senneterre Station, Que., protected to Board's satisfaction.
53305 July 20—Approving location and layout of C.N. Rys.' proposed station building at St. Eustache sur le lac, Que.
53306 July 21—Authorizing C.P.R. to shorten westbound ringing circuit of wigwag signal and bell installed at crossing of Ritson road, Oshawa Yard, Ont., 231 feet.
53307 July 22—Authorizing C.P.R. to construct spur to serve Regal Coal Co., Ltd., at East Coulee, Alta.
53308 July 22—Authorizing C.P.R. to construct spur to serve Central Alberta Dairy Pool, Ltd., at Red Deer, Alta.
53309 July 24—Authorizing Sask. Dep't of Highways & Transportation to construct highway crossing over C.N. Rys. on road allowance east of SE¼ Sec. 18-45-10 W2M., Sask.
53310 July 24—Declaring C.N. Rys. crossing of Main street, Richmond, Que., protected to Board's satisfaction so long as speed limitation of 10 miles an hour is in effect.
53311 July 23—Declaring C.N. Rys. crossing, first west of Westmere Station, N.S., protected to Board's satisfaction.
53312 July 23—Declaring C.N. Rys. crossing, second north of L'Acadie Station, Que., protected to Board's satisfaction.
53313 July 23—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in tariffs filed by C.N. Rys. under sec. 3.
53314 July 25—Authorizing Ont. Dep't Northern Development to construct an overhead crossing over C.N. Rys. for Trans-Canada Highway, in Lot 14, Cons. 1 and 2, near Nipigon, Ont.
53315 July 28—Authorizing Tp. Chatham, Ont., to construct crossing over Pere Marquette Ry., in place of existing private crossing at McGregor's Lane, Lots 21 and 22, Con. 2, Gore of Chatham, Ont.
53316 July 27—Declaring London & Port Stanley Ry. crossing of Horton street, London, Ont., protected to Board's satisfaction, so long as speed limitation of 10 miles an hour is in effect.
53317 July 27—Declaring C.N. Rys. crossing, first west of Gordon Station, Man., protected to Board's satisfaction.
53318 July 28—Authorizing Ont. Dep't Northern Development to construct level crossing over C.N. Rys. at mileage 88·73, Alderdale Subd'n, on Sturgeon Falls-Field road, Lot 6, Con. 3, Tp. Field, Dist. Nipissing.
53319 July 29—Directing C.N. Rys. to install automatic bell and wigwag in lieu of existing electric bell at crossing known as Prouty's Crossing, between Lennoxville and Waterville, Que.
53320 July 30—Authorizing C.N. Rys. to remove grain loading siding at mileage 56, Oyen Subd'n, Alta., between Sibbald and Benton, Alta.
53321 July 30—Authorizing C.P.R. to remove station agent at Coldwater, Ont. (Caretaker to be appointed).
53322 July 30—Declaring Montreal & Southern Counties Ry. crossing of Alexandre Taschereau Boulevard, at Greenfield Park Que., satisfactorily protected so long as speed limitation of 10 miles an hour is in effect.
53323 July 30—Approving New York Central R.R. Standard Mileage Freight Tariff C.R.C. No. 3614.
53324 July 30—Authorizing C.P.R. to construct spur (Sulphur Storage Spur) to serve Consolidated Mining & Smelting Co., of Canada, Ltd., at Tadanac, B.C.
53325 July 30—Approving Express Traffic Ass'n Supp. 20 to tariff C.R.C. No. 694, covering amendments to Regulations for Transportation by express of acids, inflammables, oxidizing substancees, samples of explosives, etc.
53326 July 31—Declaring C.P.R. crossing of Saskatchewan Trail, 5th crossing west of Portage la Prairie, Man., protected to Board's satisfaction.
53327 July 30—Declaring C.N. Rys. crossing just south of Letellier Station, Man., protected to Board's satisfaction.
53328 July 31—Authorizing C.P.R. to construct spur to serve Murray Collieries, at East Coulee, Alta.
53329 July 31—Relieving C.N. Rys. from fencing between certain mileages on their Inverness Subd'n, New Glasgow Division, N.S.
53330 July 30—Declaring C.N. Rys. crossing of Highway No. 8 at Covered Bridge, Parish of St. Mary's, N.B., protected to Board's satisfaction, and rescinding Order No. 45339, September 9, 1930.
53331 Aug. 1—Authorizing C.N. Rys. to dispense with services of towerman at interlocking plant at Peebles, Sask.

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233

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXVI | Ottawa, September 1, 1936 | No. 12

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

ORDER No. 53339

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

FRIDAY, the 7th day of August, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

It is ordered: That the tolls published in the following tariffs, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement 27 to Tariff C.R.C. No. E-1737.
Supplement 6 to Tariff C.R.C. No. E-1744.
Supplement 20 to Tariff C.R.C. No. E-1745.
Supplement 63 to Tariff C.R.C. No. E-1804.
Supplement 22 to Tariff C.R.C. No. E-2248.
Supplement 1 to Tariff C.R.C. No. E-2437.
Supplement 2 to Tariff C.R.C. No. E-2437.
Tariff C.R.C. No. E-2444.
Supplement 1 to Tariff C.R.C. No. E-2444.
Tariff C.R.C. No. E-2447.
Tariff C.R.C. No. E-2448.
Supplement No. 1 to Tariff C.R.C. No. E-2448.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53340

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Martime Freight Rates Act.

File No. 34822.12

FRIDAY, the 7th day of August, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published to Ottawa, Ont., in second revised page 34 of Tariff C.R.C. No. E-4757, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said second revised page 34 of Tariff C.R.C. No. E-4757, approved herein, are as follows:—

From	Cents per 100 pounds
Halifax, N.S.	33*
Saint John, N.B.	31
West Saint John, N.B.	

* One and one-half cents per 100 pounds to be deducted account of water movement.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53341

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Martime Freight Rates Act.

File No. 34822.12

FRIDAY, the 7th day of August, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in items 120-A and 2738 of Supplement No. 13 to Tariff C.R.C. No. E-4775, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 13 to Tariff C.R.C. No. E-4775, approved herein, are as follows:—

Item	Cents per 100 pounds
120-A	60½
2738	20

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53352

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Martime Freight Rates Act.

File No. 34822.12

MONDAY, the 10th day of August, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in item 1796 of Supplement No. 12 to Tariff C.R.C. No. E-4775, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 12 to Tariff C.R.C. No. E-4775, approved herein, is 4½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53353

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Martime Freight Rates Act.

File No. 34822.12

MONDAY, the 10th day of August, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. E-4784, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. E-4784, approved herein, are as follows:—

Miles	Cents per 100 pounds
5	5½
6 to 10	7
11 " 15	9½
16 " 20	11½
21 " 30	12½
31 " 40	14
41 " 45	14½
46 " 50	15
51 " 65	16½
66 " 80	17½
81 " 100	19
101 " 125	21½
126 " 150	24
151 " 175	25
176 " 200	26½

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53354

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and the Order of the Board No. 52110, dated July 30, 1935, approving tolls published in the Dominion Atlantic Railway Company's Supplement No. 20 to Tariff C.R.C. No. 906.

File No. 34822.13

MONDAY, the 10th day of August, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in items 70-B, 242, 243, and 265 of Supplement No. 33 to Tariff C.R.C. No. 906, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 33 to Tariff C.R.C. No. 906, approved herein, are as follows:—

Item	To	Cents per 100 pounds
70-B	Port Williams, N.S.	6
	Waterville, N.S.	6
	Berwick, N.S.	7
	Canning, N.S.	6
	From	
242	Annapolis, N.S.	9½
	Port Williams, N.S.	5
	From	
243	Windsor Jct., N.S.	5½
	Truro, N.S.	6
265		4

3. And the Board further orders that the said Order No. 52110, dated July 30, 1935, be, and it is hereby, rescinded.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53356

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Martime Freight Rates Act.

File No. 34822.13

TUESDAY, the 11th day of August, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 1006, filed by the Dominion Atlantic Railway Company under section 9 of the Martime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 1006, approved herein, are as follows:—

Item No.	Cents per 100 pounds
5	34½
15 to 50 inc.	Cents per barrel
From	To

	Halifax, N.S.	Yarmouth, N.S.
Hartville, N.S.	37½	..
Windsor, N.S.	39½	59
Brooklyn, N.S.	40	..
Mosherville, N.S.	41½	..
Clarksville, N.S.	43½	..
Kennetcook, N.S.	43½	..
Hantsport, N.S.	38	59
Horton Landing, N.S.	41½	59
Port Williams, N.S.	42½	59
Kentville, N.S.	43½	57½
Sheffield Mills, N.S.	49	61½
Kingsport, N.S.	49	61½
Billtown, N.S.	50	66½
Grafton, N.S.	50	66½
Weston, N.S.	53	66½
Coldbrook, N.S.	49	57½
Berwick, N.S.	49	57½
Kingston, N.S.	50	57½
Middleton, N.S.	53	53
Paradise, N.S.	53	53
Bridgetown, N.S.	57½	50
Annapolis, N.S.	57½	49
Clementsport, N.S.	59	49
Bear River, N.S.	59	43½
Digby, N.S.	59	42½
Bloomfield, N.S.	59	41½
Plympton, N.S.	59	36½
Weymouth, N.S.	59	35
Church Point, N.S.	59	34
Little Brook, N.S.	59	31½
Parker Eakin's Siding, N.S.	59	27½
Sigogne, N.S.	59	25½
Hectanooga, N.S.	59	22
Brazil Lake, N.S.	59	20½
Hebron, N.S.	59	20½
Yarmouth, N.S.	53½	..

Item No.	Cents per 100 pounds
60	17
65 (To Truro)	For
From	

	Sydney, N.S.	Charlottetown, P.E.I.
Wilmot, N.S.	23	21
Kingston, N.S.	23	21
Auburn, N.S.	23	21
Aylesford, N.S.	23	21
Berwick, N.S.	..	21½
Waterville, N.S.	..	23½
Cambridge, N.S.	..	23½
Middleton, N.S.	12½	11
Lawrencetown, N.S.	23	21
Paradise, N.S.	23	21
Bridgetown, N.S.	12½	10½
Tupperville, N.S.	23½	21½
Round Hill, N.S.	25½	23½
Annapolis, N.S	27½	25
Clementsport, N.S.	29	26½
Deep Brook, N.S.	30	27½
Bear River, N.S.	..	29
Digby, N.S.	..	30

Item No.	Cents per 100 pounds
75	
From	
Windsor, N.S.	12
Kingsport, N.S.	12
Weston, N.S.	12½

Item No.	
80	
From	
Windsor, N.S.	11
Kingsport, N.S	10
Weston, N.S.	11

Item No.	Cents per 100 pounds
85	14

Item No. 90 To	L.C.L.	C.L.
Middleton, N.S.	..	8
Bridgetown, N.S.	..	8
Yarmouth, N.S.	..	10

Item No. 95 To		
Halifax, N.S.	35½	..
Annapolis, N.S.	32	..
Digby, N.S.	32	..
Yarmouth, N.S.	42½	..

Item No.		
110	..	18
115	..	16½
120	43	..
130	..	12½
135	..	12½
150	..	22½
155 To		
Halifax, N.S.	36½	28½
Yarmouth, N.S.	34½	..
Truro, N.S.	37½	..

Item No. 160 From		
Bridgetown, N.S. Middleton, N.S. Aylesford, N.S. Berwick, N.S.	34	21½

Item No.		
165	34½	..

170 (To Truro) For	Classes 2nd	3rd	5th
Summerside, P.E.I.	23½	18	12½
Charlottetown, P.E.I.	23½	18	12½
Tignish, P.E.I.	21½	20	12½
Amherst, N.S.	25	22	15
Sackville, N.B.	25	21½	14
Moncton, N.B.	21½	18	12½
Campbellton, N.B.	23½	18½	12½
Bathurst, N.B.	21½	17½	12½
Newcastle, N.B.	21½	20	12½
New Glasgow, N.S.	31½	26½	17½
Sydney, N.S.	21½	20	12½
Glace Bay, N.S.	21½	20	12½
Mulgrave, N.S.	30	26½	17½

Item No.	Cents per 100 pounds
175	28
180 To	
Annapolis, N.S.	10
Truro, N.S.	8¼

Item No.	
190	5½
195	5½
200	4
205	7½
210	8
215	5½
225 To	
Middleton, N.S.	5
Bridgetown, N.S.	5
Yarmouth, N.S.	6

Item No.	Cents per 100 pounds
230	
To	
Windsor, N.S.	8
Wolfville, N.S.	8½
Kentville, N.S.	9
Kingsport, N.S.	10
Lakeville, N.S.	10
Item No.	
235	
To	
Berwick, N.S.	10
Kingston, N.S.	10½
Middleton, N.S.	10½
Lawrencetown, N.S.	11
Bridgetown, N.S.	11
Item No.	
240	
To	
Annapolis, N.S.	11½
Digby, N.S.	13½
Yarmouth, N.S.	14½
Truro, N.S.	8½
Item No.	
245	
To	
Middleton, N.S.	5½
Bridgetown, N.S.	5½
Yarmouth, N.S.	9
Item No.	
250	
To	
Stillwater, N.S.	5
Newport, N.S.	6½
Windsor, N.S.	7
Port Williams, N.S.	7½
Item No.	
255	
To	
Kentville, N.S.	8
Kingsport, N.S.	9
Weston, N.S.	10
Aylesford, N.S.	9
Item No.	
260	
To	
Lawrencetown, N.S.	9½
Annapolis, N.S.	10
Digby, N.S.	10
North Range, N.S.	10
Item No.	
265	
To	
Church Point, N.S.	10½
Meteghan, N.S.	10½
Hebron, N.S.	10½
Brooklyn, N.S.	7½
Item No.	
270	
To	
Stanley, N.S.	7½
Kennetcook, N.S.	9
Burtons, N.S.	9
South Maitland, N.S.	9½
Lower Truro, N.S.	10

Item No. 280 (To Truro) For	Classes 1st	2nd
Amherst, N.S.	44	37½
New Glasgow, N.S.	46½	41
Sydney, N.S.	36	32½
Sackville, N.B.	40	35
Moncton, N.B.	35	30
Summerside, P.E.I.	36	32
Charlottetown, P.E.I.	36	32

Item No.	Cents per 100 pounds			
	2nd	3rd	4th	5th
285	29½	26	22	17½
290		20		
300		26		
305		25		
325		21½		
335		15½		
345		21		
	C.L.		L.C.L.	
350	22		29	
355	27½		58½	
360		37½		
	C.L.		L.C.L.	
365	22		44	
370	25		34½	
375		34½		
380 (To Truro)				
For				
Moncton, N.B.		27		
Sackville, N.B.		29		
Sydney, N.S.		27½		

Item No. 400 From	L.C.L.	C.L.
Middleton, N.S.	38½	25½
Kingston, N.S.	36	24
Lakeville, N.S.	36	24

Item No.		
405	..	27½
410		
From		
Lower Truro, N.S.	..	17
Clifton, N.S.	..	17
Princeport Rd., N.S.	..	17

Item No. 415 (To Yarmouth) From		
Amherst, N.S.	..	15½
Aulac, N.B.	..	14
Ft. Lawrence, N.S.	..	15½
Sackville, N.B.	..	14

Item No.		
420	..	14
425	..	14
430		
To		
Digby, N.S.	116	..
Weymouth. N.S.	128	..
Yarmouth, N.S.	140	..

Item No.		
435	27½	..

	Classes		L.C.L.
	2nd	3rd	4th
440	29½	26	22
445			
To			
Kentville, N.S.		22	
Yarmouth, N.S.		9½	

Item No. 455 From	
Middleton, N.S.	20
Bridgetown, N.S.	20

Item No.	
460	34
470	19
471	17½
473	14½
480	19½
490	
From	
Truro, N.S.	14½
Lower Truro, N.S.	18

Item No. 495 From	
Truro, N.S.	14½
Lower Truro, N.S.	18
Item No. 500	17½
505	Cents per car mile
Baggage	16
Box	12
Caboose, 4-wheeled	8½
Caboose, 8-wheeled	12
Chair	20
Coach	20
Coal or coke	8½
Dining	24
Dump	8½
Express	16
Flat or platform	8½
Flat, with fixed or stationary racks, without roof	8½
Freight cars, n.o.i.b.n.	12
Gondola	8½
Livestock, not slatted	16
Livestock, slatted	12
Mail	16
Parlor	24
Passenger cars, n.o.i.b.n.	20
Refrigerator	12
Sleeping	24
Tank	8½
Track scale testing	16
Item No. 510 To	Cents per 100 pounds
Middleton, N.S.	15
Bridgetown. N.S.	15
Annapolis, N.S.	17½
Digby, N.S.	17½
Yarmouth, N.S.	17½
Item No. 515 To	
Middleton, N.S.	7
Bridgetown, N.S.	8
Item No. 520 To	
Halifax, N.S.	22½
Truro, N.S. (For local delivery)	25
Truro, N.S. (For furtherance)	20
Item No. 525	27
530	21
540	29
545 To	

	L.C.L.	C.L.
Yarmouth, N.S.	20½	9
Middleton, N.S.	19½	

Item No. 550 To	
Windsor, N.S.	10½
Wolfville, N.S.	14
Kentville, N.S.	15
Middleton, N.S.	18
Item No. 555 To	
Bridgetown. N.S.	18
Annapolis, N.S.	18
Digby, N.S.	20

Item No.
560
To

Halifax, N.S.	31½
Truro, N.S.	32½

Item No.
570 (To Truro)
For

Montreal, P.Q.	9
St. Hyacinthe, P.Q.	9
Toronto, Ont.	10
Waterloo, Ont.	10

Item No.
575 (To Truro)
For

	L.C.L.	C.L.
Bradalbane, P.E.I.	..	12½
Charlottetown, P.E.I.	16½	14
Summerside, P.E.I.	15	12½
Bathurst, N.B.	16	14½
Campbellton, N.B.	14½	13
Moncton, N.B.	17	14
Newcastle, N.B.	16	14½
Sackville, N.B.	19½	16
Amherst, N.S.	22	17
Glace Bay, N.S.	16	14½
Inverness, N.S.	14	12½
New Glasgow, N.S.	26	20
Mulgrave, N.S.	17	14
Sydney, N.S.	16	14½

Item No.
580 .. .. ..

ORDER No. 53361

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Martime Freight Rates Act.

File No. 34822.12

THURSDAY, the 13th day of August, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in items 550-A, 675-B, and 2720-A of Supplement No. 10 to Tariff C.R.C. No. E-4775, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the proportions of joint rates in item 675-B to be reported for the Temiscouata Railway at 10 cents per 100 pounds, the Canadian Pacific Railway Company the balance.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 10 to Tariff C.R.C. No. E-4775, approved herein, are as follows:—

Item		Cents per 100 pounds
550-A		$4\frac{1}{2}$
675-B		Minimum 60,000 lbs.
	To Edmundston, N.B.	27
	Cabano, P.Q.	Minimum 24,000 lbs.
	Notre Dame du Lac, P.Q.	*$37\frac{1}{2}$
	*{Temiscouata Railway Company's proportion $12\frac{1}{2}$	
	{Canadian Pacific Railway Company, balance	
2720-A	To Brantford, Ont.	Minimum 80,000 lbs. $32\frac{1}{2}$

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53362

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Martime Freight Rates Act.

File No. 34822.12

THURSDAY, the 13th day of August, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item 2739 of Supplement No. 16 to Tariff C.R.C. No. E-4775, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 16 to Tariff C.R.C. No. E-4775, approved herein, is 30 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53363

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Martime Freight Rates Act.

File No. 34822.13

THURSDAY, the 13th day of August, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in Supplement No. 1 to Tariff C.R.C. No. 1,000, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 1 to Tariff C.R.C. No. 1,000, approved herein, is 33½ cents per 100 pounds; one and one-half cents per 100 pounds to be deducted account of water movement.

H. GUTHRIE,
Chief Commissioner.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXVI Ottawa, September 15, 1936 No. 13

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

ORDER No. 53386

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for permission to amend their Tariff C.R.C. No. E-2460 on less than statutory notice.

File No. 27612.140

THURSDAY, the 27th day of August, A.D. 1936.

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

Upon its appearing that, due to a clerical error, a rate of 39 cents per 100 pounds on washing and ironing machines from Toronto to Montreal, for export, to meet water competition, was published to become effective August 22, 1936,—

It is ordered: That the applicants be, and they are hereby, permitted to publish and file, on one day's notice, a supplement to the said Tariff C.R.C. No. E-2460 changing the rate on washing and ironing machines from Toronto to Montreal, for export, from 39 cents per 100 pounds to 40 cents per 100 pounds.

J. A. STONEMAN,
Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR JUNE, 1936

Railway accidents	209,	with	23	persons killed and	231 injured.
Railway accidents at highway crossings	12,	with	4	persons killed and	25 injured.
	221		27		256

	Killed	Injured
Passengers	—	52
Employees	6	160
Others	21	44
	27	256

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DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents	
	New Brunswick
1	Automobile—Excessive speed of auto. Licence N.B.-F-3375.
1	Automobile—Licence N.B.-F-2386.
	Quebec
4	Automobile—Driver failed to stop for crossing. Que. licences H-35226, 20655, 29439, FP-8210.
1	Auto Truck—Driver failed to stop for crossing. Que. licence FM-3683.
	Ontario
1	Automobile—Driver ran into side of train. Licence Ont. 7743 (G. Smith, 8 Collier street, Barrie, Ont.).
1	Automobile—Driver ran into side of hand-car. Licence Ont. R-7563 (B. Roswell, Scotland Station, Ont.).
1	Pedestrian—Failed to heed warning of bell and wigwag; walked in front of train.
	Manitoba
1	Auto Truck—Licence Man. T-4249.
1	Pedestrian—Deaf, stepped in front of train.

Of the twelve accidents at highway crossings, three occurred at protected crossings and nine at unprotected crossings. Nine of the accidents occurred during the daylight hours and three at night.

Ottawa, August 25, 1936.

SUMMARIES OF ORDERS ISSUED BY THE BOARD OF RAILWAY COMMISSIONERS

53332. Aug. 1—Declaring C.N. Rys. crossing 450 feet west of Ribstone, Alta., protected to Board's satisfaction.

53333. Aug. 4—Authorizing Esquimalt & Nanaimo Ry. to construct spur to serve Canadian Collieries (Dunsmuir), Ltd., at mileage 76 Victoria Subd'n, Vancouver Island, B.C.

53334. July 29—Directing C.P.R. to install double automatic bells and wigwag signals at crossing just west of Islington Stn., Ont.

53335. Aug. 5—Approving and authorizing clearances of pulp storage shed of Minas Basin Pulp & Power Co., Ltd., location on Dominion Atlantic Ry. spur serving Dominion Government Wharf at Hantsport, N.S.

53336. Aug. 4—Authorizing B.C. Dep't Public Works to convert public crossing at mileage 33·95, Shuswap Subd'n, west of Revelstoke, B.C., into a farm crossing.

53337. Aug. 4—Authorizing C.P.R. to construct an eight per cent grade at crossing at south end of Jeanie street, Pakenham, Ont.

53338. Aug. 6—Authorizing Alberta Dep't Public Works to construct crossing over C.P.R. between N.E. ¼ Sec. 5 and S.E. ¼ Sec. 8-41-7 W4M., Alta.

53339. Aug. 7—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in tariffs filed by C.N. Rys. under Sec. 3.

53340. Aug. 7—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls
53341. published in tariffs and supplements filed by C.P.R. under sec. 9.

53342. Aug. 6—Authorizing C.N. Rys. to install automatic crossing protection in lieu of present mechanical interlocker at crossing over C.P.R. at Ellwood, Ont.

53343. Aug. 7—Authorizing C.N. Rys. to reconstruct subway on King's Highway No. 7, near New Hamburg, Ont.

53344. Aug. 7—Authorizing C.N. Rys. to operate over siding of Toronto Harbour Comm'rs serving Link-Belt Limited, near Leslie street, Toronto, Ont.

53345. Aug. 7—Authorizing C.P.R. to operate over main lead trackage and sidings of Toronto Harbour Comm'rs serving Consolidated Coal & Dock Co., Ltd., near Unwin avenue, Toronto, Ont.

53346. Aug. 7—Authorizing C.N. Rys. to maintain and operate trains over spurs to be constructed by the Toronto Harbour Commissioners to serve Consolidated Coal & Dock Company, Ltd., on Unwin avenue, Toronto, Ontario.

53347. Aug. 10—Declaring C.N. Rys. crossing, second public crossing east of Riverside Tower, County of Carleton, Province of Ontario, protected to Board's satisfaction.

53348. Aug. 10—Declaring C.N. Rys. crossing, first east of Morrison Station, Nova Scotia, protected to Board's satisfaction.
53349. Aug. 10—Declaring C.N. Rys. crossing at Angeline street, Lindsay, Ontario, protected to Board's satisfaction.
53350. Aug. 10—Declaring C.P. Ry. crossing, first north of Blackie, Alberta, protected to Board's satisfaction.
53351. Aug. 10—Declaring C.N. Rys. crossing, at Victoria street, Iroquois, Ont., protected to Board's satisfaction.
53352. Aug. 10—Approving under Maritime Freight Rates Act, Sec. 3, sub-sec. 3, toll published in item 1796 of Supplement No. 12 to Tariff C.R.C. No. E-4775 filed by C.P.R. under Sec. 9.
53353. Aug. 10—Approving under Maritime Freight Rates Act, Sec. 3, sub-sec. 3, tolls published in Tariff C.R.C. No. E-4784, filed by the C.P. Ry. under Section 9.
53354. Aug. 10—Approving under Maritime Freight Rates Act, Sec. 3, sub-sec. 3, tolls published in tariff and supplements filed by the Dominion Atlantic Railway Co. under sec. 9.
53355. Aug. 10—Authorizing C.P. Ry. to reconstruct Bridge No. 40·7, Hoadley Subdivision, over Blind Man River, Alberta.
53356. Aug. 11—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in Tariff C.R.C. No. 1006, filed by the Dominion Atlantic Railway Co., under sec. 9.
53357. Aug. 12—Declaring C.P. Rys. crossing immediately south of Beeton Station, Ontario, protected to Board's satisfaction.
53358. Aug. 12—Authorizing Dominion Atlantic Railway Co. to remove station agent at Ellershouse Station, Nova Scotia, and to appoint a caretaker.
53359. Aug. 13—Declaring C.P. Ry. crossing first west of Cody's station, New Brunswick, protected to Board's satisfaction.
53360. Aug. 13—Declaring Toronto, Hamilton & Buffalo Ry. crossing immediately west of Scotland station, Ontario, protected to Board's satisfaction.
53361. Aug. 13—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls
53362. published in Tariffs and Supplements filed by C.P. Ry. under sec. 9.
53363. Aug. 13—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, toll published in Supplement 1 to Tariff C.R.C. No. 1,000, filed by the Dominion Atlantic Railway Co., under section 9.
53364. Aug. 17—Authorizing the C.P. Ry. to construct a proposed siding to serve John Campbell & Sons, Ltd., at Westree, Ontario.
53365. Aug. 14—Authorizing the Department of Public Works, Province of New Brunswick, to construct a highway diversion at Blissfield, New Brunswick.
53366. Aug. 18—Authorizing the C.P. Ry. to construct an extension to branch line, to serve Canadian Sugar Factories, Ltd.
53367. Aug. 18—Declaring Père Marquette Railway crossing just west of Pelton Tower, Ontario, protected to Board's satisfaction.
53368. Aug. 18—Declaring Père Marquette Railway crossing first west of Blenheim Station, Ontario, protected to Board's satisfaction, providing the present speed restriction remains in effect.
53369. Aug. 18—Authorizing the C.P. Ry. to lengthen ringing circuits for highway crossing bell at Concession Road near Locust Hill, Ontario.
53370. Aug. 18—Authorizing the C.P. Ry. to lengthen westbound ringing circuit for crossing bell at Crookston Road, near Ivanhoe, Ontario.
53371. Aug. 18—Authorizing the C.P. Ry. to lengthen ringing circuit for crossing bell at Side Road crossing near Claremont, Ontario.
53372. Aug. 18—Authorizing the C.P. Ry. to lengthen ringing circuits for highway crossing bell at Side Road, Glen Major, Ontario.
53373. Aug. 18—Authorizing the C.P. Ry. to lengthen the eastbound ringing circuit for highway crossing bell at Concession Road, Havelock, Ontario.
53374. Aug. 18—Authorizing the C.P. Ry. to lengthen ringing circuits for highway crossing bell at Godfrey Road crossing, near Mountain Grove, Ontario.
53375. Aug. 18—Authorizing the C.P. Ry. and the Midland Railway Co. of Manitoba to operate their trains through the connections between the said railways in the vicinity of Portage Ave. and Academy Road, Winnipeg, Man., without first being brought to a stop.
53376. Aug. 19—Declaring the C.N. Rlys. crossing at mileage 1·0, Carlyle Subdivision, protected to the Board's satisfaction.
53377. Aug. 19—Declaring the C.P. Rly. crossing at west end of Nacmine Yard, mileage 77·0, Langdon Subdivision, protected to the Board's satisfaction.
53378. Aug. 19—Declaring the C.N. Rlys. crossing of George V Ave., City of Montreal, protected to Board's satisfaction, provided the present speed limitation remains in effect.

53379. Aug. 18—Requiring the C.N. Rys. to see that cars are not left standing within 100 feet on the south side of the crossing of highway at entrance to Rivière à Pierre station, Quebec, etc.

53380. Authorizing the C.N. Rys. to construct a highway crossing of their railway near Kamsack, Saskatchewan.

53381. Aug. 21—Approving revised sheets for and supplements to the Bell Telephone Company's Tariff C.R.C. No. 6652, effective September 1, 1936.

219

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXVI | Ottawa, October 1, 1936 | No. 14

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Application of the Canadian National Railways for an Order granting leave to abandon all that portion of its Nicolet Subdivision, in the province of Quebec, between St. Leonard Junction and Nicolet, a total distance of 14·7 miles;

And in the matter of an application for re-hearing of the above application, dated June 18, 1936, made by H. N. Biron, Mayor of the Town of Nicolet, and by the Honourable Arthur Trahan, resident of the said Town;

And in the matter of an application of the Town of Nicolet, dated May 27, 1936, for leave to appeal to the Supreme Court of Canada from the Order of the Board No. 53012, dated April 15, 1936.

(File No. 39310·9)

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER:

The original application in this matter was made by the Canadian National Railways for an Order granting leave to abandon the operation of that portion of its Nicolet Subdivision, in the province of Quebec, between St. Leonard Junction and Nicolet, a total distance of 14·7 miles, and the application was duly heard by the Board on May 17, 1935, and an order was made thereon on 15th day of April, 1936, whereby it was ordered that,

> "effective June 15, 1936, the abandonment of operation of that portion of the Applicants' Nicolet Subdivision, in the province of Quebec, between St. Leonard Junction (mileage 0·00) and Nicolet (mileage 14·7), a total distance of 14·7 miles, be, and it is hereby, approved; Provided the Applicants furnish adequate train service between Nicolet, Doucet's Landing, and Aston Junction connecting with main line trains at Aston Junction, as well as suitable station and siding facilities to take care of the traffic."

The above order followed the judgment of a majority of the members of the Board who heard the application. The Deputy Chief Commissioner dissented from the judgment.

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On May 27, 1936, the town of Nicolet filed with the Board a notice of appeal from the above order of the Board, and upon June 19, 1936, a notice was filed with the Board signed by the Mayor of the town of Nicolet and the Hon. Mr. Justice Trahan, a resident of the said town, protesting against the order of the Board and asking for a rehearing of the whole matter. On May 27, 1936, the town of Nicolet filed with the Board an application for extension of time for hearing the appeal, and on June 15 the Board made an order extending the time for a period of thirty days and providing that, pending the hearing of the application and until further order of the Board, the Canadian National Railways suspend any action in the way of dismantling the line.

On July 14, 1936, after due notice to all parties concerned, the Board held a sitting at the town of Nicolet, at which counsel representing the applicant railway, the town of Nicolet, and the Hon. Mr. Justice Trahan in his capacity as a citizen, appeared. The proceedings before the Board at Nicolet upon the above mentioned date involved practically a rehearing of the whole matter and included also a submission and argument upon the question of leave to appeal. During the rehearing it developed that exception was taken to the figures which had been submitted by the railway company upon the former hearing, setting forth the revenues and operating costs upon the line of railway in question, and, with the concurrence of all parties, it was decided that an accountant familiar with railway accounting should be appointed by the Board to examine and report upon the figures submitted by the railway company when the original application was made to the Board. Mr. A. V. Franklyn, Railway Auditor of the Department of Railways and Canals, was appointed by the Board to conduct this examination, and on August 6 Mr. Franklyn reported to the Board as follows:—

> "As directed, I have examined the detail behind the figures submitted you by the National Railways in connection with losses sustained by them on the Nicolet Subdivision, between St. Leonard Junction and Nicolet, P.Q.
>
> "The test periods used were as follows:—
>
> September, 1930, to August, 1931 (inclusive).
> Calendar year 1933.
> " " 1934.
> " " 1935.
>
> "In a study such as this—where a branch forms but one part of a network of lines—it is impossible to obtain exact figures; the accounts could not be kept that way. The problem is a highly technical one and involves not only direct revenues and expenses but also the use of formulæ, prorating, and other features in which the judgment of the economist is brought to bear.
>
> "However, when a heavy loss is quite apparent (as on this particular branch) such estimated figures as have to be incorporated play a relatively minor part and do not disturb the general picture.
>
> "I have made a study of the methods generally employed by the company to estimate the value of branch lines and am satisfied that same is very fair and sound.
>
> "As to the figures, I have made ample tests in Montreal, Quebec and Levis, and—except for the year 1933—the final results obtained by me show very little difference from those submitted you by the company.
>
> "As to the exception noted, the company's figures for 1933 included charges for maintenance of way on a 'normal year' basis, while, as a matter of fact, the company allowed their maintenance to lag that year

owing to the impending abandonment. Their presentation is perhaps quite justifiable; nevertheless, I have substituted the actual cost to bring the result for 1933 as near as possible to the facts.

"The following table shows the results of operation as closely as can be determined. Full credit has been given the branch for all revenue received by it—regardless of distance covered, while the expenses charged against the branch cover only straight operating expenses and omit superintendence, general overhead, depreciation and interest on investment.

RESULT OF OPERATION OF NICOLET BRANCH

Period	Revenues	Expenses	Operating Loss
Sept. 1930, to Aug. 1931	$10,311	$31,731	$21,420
Year 1933	4,095	21,282	17,187*
" 1934	4,931	25,666	20,735
" 1935	6,643	25,198	18,555

(*Under normal conditions this loss would be $21,250)

"The full significance of these figures may, perhaps, be better shown by averaging out the cost to earn a dollar of revenue; this is a method generally used.

AVERAGE COST TO EARN A DOLLAR OF REVENUE

	Cost on Nicolet Branch	Cost over Entire System
Sept. 1930, to Aug. 1931	$3.08	91c.
Year 1933	5.20	96c.
" 1934	5.21	92c.
" 1935	3.80	92c.

A copy of the above report was duly forwarded to all parties interested in the matter. From the report it is apparent that the figures submitted by the railway company were substantially correct, and that the operating losses for the Nicolet Branch, which is the subject of this application, for the years 1933 to 1935 inclusive, have been as follows:—

1933	$17,187 00
1934	20,735 00
1935	18,555 00

and it is noted by the auditor in his report that under normal conditions the loss for the year 1933 would be $21,250.

No evidence was given at the rehearing to lead one to believe that there was any likelihood of improvement in either freight or passenger traffic upon this line in the future. The total revenues from the line for the above years were as follows:—

1933	$4,095 00
1934	4,931 00
1935	6,643 00

and in my view this heavy annual loss in operation should not be imposed upon the railway in a case like the present, where no serious inconvenience will result to the public by abandonment of the line; provided reasonable railway facilities are furnished by the applicant company between Nicolet, Doucet's Landing, and Aston Junction, as set out in the said order No. 53012. To carry out the Board's intention in regard to this proviso, I think more definite language than appears in the said order should be employed. Order No. 53012 should be amended by adding the following clause at the end thereof, namely:—

"Local passenger train service between Nicolet and St. Leonard Junction shall be diverted via St. Gregoire and Aston Junction. Connecting tracks shall be constructed by the applicant company at St. Gregoire and Aston Junction to provide straightaway movements between St. Hyacinthe and Nicolet."

After a careful examination of all the evidence submitted and of all that transpired upon the original application and upon the rehearing, and after careful consideration of the written submissions filed by the various parties, my conclusion is that the order permitting abandonment of the line, dated April 15, 1936, should be amended as above indicated, but otherwise should be confirmed.

The only other question for decision at the present time is the application on behalf of the town of Nicolet for leave to appeal from the above order of the Board. The grounds alleged in the notice filed by the town of Nicolet and substantially repeated in the notice filed with the Board by the Mayor of Nicolet and the Hon. Mr. Justice Trahan are briefly stated as follows:—

1. That the town of Nicolet made a grant of $10,000 to the Drummond County Railway Company, which was subsequently incorporated into the Intercolonial Railway and now forms part of the Canadian National Railways, and it is alleged that by reason of this grant the applicant company became obligated to establish and maintain without interruption a daily service upon the railway between Nicolet and Drummondville;
2. That the applicant railway has always recognized this obligation by maintaining this service up to the present;
3. That the Board made the order for abandonment without taking into consideration the existence and effect of the above contractual obligation;
4. That the railway company is still bound to continue operation upon the said line by reason of the said contract;
5. That the order of the Board has the effect of annulling the said contract;
6. That the action of the Board in this respect is *ultra vires*.

Subsequent to the hearing, there has been filed with the Board a copy of the by-law, or regulation, of the town of Nicolet, which was approved by the electors on August 22, 1888, and it is recited in this by-law that under the provisions of Chapter 52, 36 Vic., of the Statutes of the Province of Quebec, the mayor and councillors of the town of Nicolet are authorized to give a sum of money or debentures " to assist in the construction of a railway situated in whole or in part within the limits of the town of Nicolet, or in the neighborhood, this railway to be constructed by companies formed into corporations"; and it is also recited that the Drummond County Railway Company has been incorporated by an Act of the province of Quebec "to construct and operate a railway beginning at the town of Drummondville, in the county of Drummond, to a point or points near the Grand Trunk Railway, crossing the counties of Richmond and Drummond, with powers to establish a branch line in the township of Wendover or Simpson and as far as the parish of Ste. Angèle, in the county of Nicolet and that of Yamaska." By this by-law the Mayor and corporation were authorized to grant to the Drummond County Railway Company the sum of $10,000 "to assist in the construction and establishment of the above railway and its branch lines". It was also provided in the said by-law that "the said sum of $10,000 cannot be claimed by the railway company until ninety days after the said railway has been accepted by the governments which shall subsidize it, and until after cars and engines are running between Drummondville and Nicolet".

There has also been filed with the Board a certified copy of the Minutes of a meeting of the Municipal Council of the Parish of St. Leonard held on September 23, 1931, reciting that the corporation of the Parish of St. Leonard made a grant to the Drummond County Railway Company of a bonus of $5,000 "to obtain the train service which the Canadian National Railways now wish to cancel," and also reciting in the said minute that "the Drummond County Railway Company accepted the said bonus of $5,000 and the terms of the said regulations passed by the Municipal Council of the Parish of St. Leonard on October 3, 1887".

There has also been filed with the Board a copy of the agreement entered into in the year 1899 between the Drummond County Railway Company and Her Majesty Queen Victoria whereby the Drummond County Railway was sold and conveyed to Her Majesty the Queen to form part of the Intercolonial Railway and, subsequently, part of the Canadian National Railways. The railway lines included in this conveyance included the branch from St. Leonard to Nicolet, which is the subject of this application. It is to be noted that in the conveyance there is no undertaking on the part of the Crown to assume or carry out any contractual obligations of the Drummond County Railway Company save those which were mentioned in the conveyance, and no mention is made therein of any obligation of the Drummond County Railway Company in respect of any contract or agreement with the town of Nicolet or with the parish of St. Leonard. I think it is very doubtful if agreements such as those alleged by the town of Nicolet or by the parish of St. Leonard would be binding upon the Crown under the above circumstances.

There is, apparently, no obligation on the part of the applicant company, or its predecessors in title, to maintain continuous operation over the line in question. The bonuses were paid to the Drummond County Railway Company after the railway had been put in operation for a period of three months, and I find nothing in the evidence verbal or documentary which would impose upon the railway company any obligation for continuous operation of the railway. The allegation in the application for leave to appeal that

> "The said Drummond County Railway Company having accepted and received the sum of $10,000, which was paid to it within the time specified, namely: three months after the completion of the construction of the line, did contract towards the Town of Nicolet the obligation of furnishing the aforesaid continuous and perpetual train service."

is not supported by any evidence which has been submitted to the Board. The by-law of the town of Nicolet merely states that the bonus was granted "to assist in the construction of a railway &c."

In my opinion, upon the facts above set out, there exists no contractual obligation upon the applicant railway which would compel it to operate the line of railway in question. I am also of opinion that under the provision of section 165 A of the Railway Act, the Board has jurisdiction to make an order approving of the abandonment of the line in question. In my opinion the Board should not grant leave to appeal either upon a question of law or of jurisdiction, or both. I do not consider that the questions raised in the application for leave to appeal warrant such a course. I think that in this case the Board should refuse leave to appeal.

However, the question of jurisdiction of the Board to entertain this application has been definitely raised in the notice for leave to appeal. Notwithstanding the ruling of the Board, the parties interested may apply for leave to appeal to the Supreme Court of Canada under the provisions of section 52, subsection 2, of the Railway Act upon the question of jurisdiction of the Board, if they so desire.

The order to be made upon the present application should be in the nature of a substantive order as of this date, amending Order No. 53012 as indicated above, dismissing the application for a rehearing and refusing leave to appeal. The parties will have the usual thirty days in which to make application for leave to appeal to the Supreme Court of Canada.

OTTAWA, September 4, 1936.

Commissioner STONE concurred.

GARCEAU, F. N., DEPUTY CHIEF COMMISSIONER:—(dissenting)

For the reasons given in my dissenting judgment of March 25, 1936, and in the application, I would grant leave to appeal to the Supreme Court of Canada from the order of the Board No. 53012, dated April 15, 1936, the railway company to continue its service pending the judgment on the appeal.

As to the application for a rehearing, I would leave the matter in abeyance until the judgment on the appeal is rendered.

OTTAWA, September 4, 1936.

(Traduction)

Requête de la compagnie des chemins de fer Nationaux du Canada, demandant qu'une ordonnance soit rendue l'autorisant à discontinuer l'exploitation de toute la partie de sa ligne sur sa subdivision de Nicolet, dans la province de Québec, qui s'étend de la jonction de St-Léonard à Nicolet, soit un parcours total de 14.7 milles;

Et in re requête pour une nouvelle audition de la susdite requête, en date du 18 juin 1936, faite par M. H.-N. Biron, maire de la ville de Nicolet, et par, l'honorable juge Arthur Trahan, citoyen de ladite ville;

Et in re requête de la ville de Nicolet, en date du 27 mai 1936, pour permission d'interjeter appel à la Cour Suprême du Canada de l'ordonnance de la Commission n° 53012, en date du 15 avril 1936.

(Dossier n° 39310.9)

JUGEMENT

GUTHRIE, Commissaire en chef:

La première requête en cette affaire fut présentée par la compagnie des chemins de fer Nationaux du Canada pour qu'une ordonnance soit rendue l'autorisant à discontinuer l'exploitation de cette partie de sa ligne, sur sa subdivision de Nicolet, qui s'étend de la jonction de St-Léonard à Nicolet, soit un parcours total de 14.7 milles, et fut dûment entendue par la Commission le 17 mai 1935, et une ordonnance fut rendue le 15 avril 1936, prescrivant—

> "qu'à partir du 15 juin 1936, la discontinuation d'exploitation de cette partie de la subdivision de Nicolet de la requérante, dans la province de Québec, qui s'étend de la jonction de St-Léonard (mille 0.00) à Nicolet (mille 14.7), soit un parcours total de 14.7 milles, soit et est par les présentes approuvée; pourvu que la requérante fournisse un service de trains suffisant entre Nicolet, Doucet's Landing et la jonction d'Aston, faisant raccordement avec les trains de la ligne principale à la jonction d'Aston, et qu'elle fournisse aussi des facilités de station et de voie d'évitement convenables pour répondre aux besoins du trafic."

L'ordonnance ci-dessus fut rendue à la suite du jugement de la majorité des membres de la Commission qui entendirent la requête. Le commissaire en chef suppléant ne se rallia pas à ce jugement.

Le 27 mai 1936, la ville de Nicolet adressa à la Commission un avis d'appel de l'ordonnance ci-dessus, et le 19 juin 1936, un avis signé par le maire de la ville de Nicolet et l'honorable juge Trahan, citoyen de ladite ville, fut produit, lequel protestait contre cette ordonnance et demandait une nouvelle audition de toute

l'affaire. Le 27 mai 1936, la ville de Nicolet présenta une requête à la Commission demandant de prolonger le délai pour l'audition de l'appel, et le 15 juin, la Commission rendit une ordonnance prolongeant le délai de trente jours et pourvoyant, en attendant l'audition de la requête et jusqu'à nouvel ordre, à ce que les chemins de fer Nationaux du Canada suspendent toute activité relativement au démantèlement de la ligne.

Le 14 juillet 1936, après avis dûment envoyé à toutes les parties intéressées, la Commission siégea à Nicolet en présence des avocats du chemin de fer, de la ville de Nicolet et de l'honorable juge Trahan, comparaissant en sa qualité de citoyen. Les procédures devant la Commission, à Nicolet et à la date ci-dessus mentionnée, équivalaient pratiquement à une nouvelle audition de toute l'affaire et comportaient aussi des allégations et arguments sur la question de permission d'interjeter appel. Au cours de cette nouvelle audition on fit objection aux chiffres qui avaient été soumis par la compagnie de chemin de fer lors de l'audition précédente, lesquels établissaient les recettes et les frais d'exploitation sur la ligne de chemin de fer en question, et du consentement de toutes les parties, il fut décidé qu'un comptable au courant de la comptabilité des chemins de fer soit nommé par la Commission pour faire un examen et faire rapport concernant les chiffres fournis par la compagnie de chemin de fer lors de la présentation de la première requête à la Commission. M. A. V. Franklyn, vérificateur ferroviaire du ministère des Chemins de fer et Canaux, fut nommé par la Commission pour faire cet examen, et le 6 août, il fit rapport à la Commission comme suit:

"Conformément aux instructions reçues, j'ai fait un examen des détails se rapportant aux chiffres qui vous ont été soumis par les chemins de fer Nationaux relativement aux pertes encourues par eux sur la subdivision de Nicolet, entre la jonction de St-Leonard et Nicolet, P.Q.

"Les périodes choisies pour cet examen ont été les suivantes:

De septembre 1930 à août 1931 (inclusivement).	
L'année de calendrier	1933.
" "	1934.
" "	1935.

"Dans une étude comme celle-ci—alors qu'une ligne d'embranchement ne constitue qu'une partie du réseau de chemins de fer—il est impossible d'obtenir des chiffres exacts; les comptes ne peuvent pas être tenus de cette manière. Le problème en est un de haute technique et comporte non seulement les recettes et les dépenses directes, mais aussi l'emploi de formules, des calculs de proportions, et d'autres aspects où le jugement de l'économiste est appelé à s'exercer.

"Toutefois, lorsqu'une perte considérable est tout à fait apparente (comme pour cet embranchement particulier), telles estimations de chiffres qui doivent être incorporés jouent un rôle relativement de peu d'importance et ne changent pas la situation générale.

"J'ai fait une étude des méthodes généralement employées par la compagnie pour estimer la valeur des lignes d'embranchement, et je suis persuadé qu'elles sont justes et sûres.

"Pour ce qui est des chiffres, j'en ai fait un examen minutieux à Montréal, à Québec et à Lévis et—à l'exception de l'année 1933—les résultats définitifs que j'ai obtenus indiquent une très légère différence de ceux qui vous ont été soumis par la compagnie.

"Quant à l'exception que je viens de noter, les chiffres de la compagnie pour l'année 1933 comprennent les frais d'entretien de la voie sur une base "d'année ordinaire", bien que, comme question de fait, la compagnie ait permis que l'entretien en soit retardé en vue de l'abandon très prochain de ladite ligne. La production de ces chiffres est peut-être tout à fait justifiable.

"J'ai néanmoins substitué les frais actuels pour produire des résultats pour l'année 1933, se rapprochant le plus possible des faits.

"Le tableau suivant indique les résultats de l'exploitation autant qu'ils peuvent être déterminés. Plein crédit a été accordé à l'embranchement pour tous les revenus qu'il a reçus sans égard à la distance parcourue, tandis que les dépenses qui lui sont chargées ne couvrent que les dépenses directes d'exploitation et ne comprennent pas les frais de surintendance, les frais généraux, la dépréciation et l'intérêt sur le capital.

RÉSULTAT DE L'EXPLOITATION DE L'EMBRANCHEMENT DE NICOLET

Périodes	Revenus	Dépenses	Pertes dans l'exploitation
Sept. 1930 à août 1931..	$10.311	$31,731	$21,420
Année 1933..	4,095	21,282	17,187*
" 1934..	4,931	25,666	20,735
" 1935..	6,643	25,198	18,555

*Dans les conditions normales cette perte serait de $21,250.

La pleine signification de ces chiffres peut probablement être mieux démontrée en établissant le coût moyen pour produire un dollar de revenu; c'est une méthode généralement employée.

COÛT MOYEN POUR RÉALISER UN DOLLAR DE REVENU

	Coût sur l'embranchement de Nicolet	Coût sur le réseau entier
Sept. 1930 à août 1931..	$3 08	91c.
Année 1933..	5 20	96c.
" 1934..	5 21	92c.
" 1935..	3 80	92c.

Une copie du rapport ci-dessus fut dûment adressée à toutes les parties intéressées dans l'affaire. Par ce rapport il appert que les chiffres soumis par la compagnie de chemin de fer sont en substance exacts et que les pertes dans l'exploitation de l'embranchement de Nicolet, lequel est le sujet de la présente requête, pour les années 1933-1935 inclusivement ont été comme suit:

1933 .. ..

"Le service local des trains de voyageurs entre Nicolet et la jonction de St-Léonard devra être détourné par St-Grégoire et la jonction d'Aston. Des voies de raccordement devront être construites par la compagnie requérante à St-Grégoire et à la jonction d'Aston pour pourvoir à un service de trains n'offrant aucun retard entre St-Hyacinthe et Nicolet".

Après un examen soigné de la preuve soumise et de tout ce qui a été révélé relativement à la première requête et lors de la dernière audition, et après considération soignée des représentations par écrit qui ont été faites par les diverses parties, j'en arrive à la conclusion que l'ordonnance permettant l'abandon de la ligne, en date du 15 avril 1936, devrait être amendée de la façon indiquée ci-dessus, mais confirmée à d'autres égards.

La seule autre question à décider pour le moment se rapporte à la requête de la ville de Nicolet demandant la permission d'interjeter appel de l'ordonnance ci-dessus de la Commission. Les motifs allégués dans l'avis produit par la ville de Nicolet et répétés en substance dans l'avis adressé à la Commission par le maire de Nicolet et l'honorable juge Trahan sont brièvement énumérés comme suit:

1. La ville de Nicolet accorda un octroi de $10,000.00 à la compagnie de chemin de fer du comté de Drummond qui fut subséquemment incorporée au chemin de fer Intercolonial et fait maintenant partie des chemins de fer Nationaux du Canada, et il est allégué qu'en raison de cet octroi, la compagnie requérante s'obligea à établir et à maintenir sans interruption un service quotidien sur le chemin de fer entre Nicolet et Drummondville;
2. Le chemin de fer requérant a toujours reconnu cette obligation en maintenant ce service jusqu'à présent;
3. La Commission rendit son ordonnance relative à l'abandon de la ligne sans prendre en considération l'existence et l'effet de l'obligation contractuelle ci-dessus mentionnée;
4. La compagnie de chemin de fer est encore tenue de continuer l'exploitation de la dite ligne en raison du dit contrat;
5. L'ordonnance de la Commission a pour effet d'annuler le dit contrat;
6. L'attitude de la Commission sous ce rapport est ultra vires.

A la suite de l'audition, on a versé au dossier de la Commission une copie du règlement de la ville de Nicolet qui fut approuvé par les électeurs le 22 août 1888, et il est stipulé dans ce règlement qu'en vertu des dispositions des statuts de la province de Québec, le maire et les conseillers de la ville de Nicolet sont autorisés à octroyer une somme en argent ou en débentures "pour aider à la construction d'un chemin de fer situé en tout ou en partie dans les limites de la ville de Nicolet ou dans le voisinage, le dit chemin de fer devant être construit par des compagnies constituées en corporation;" il est aussi mentionné que la compagnie de chemin de fer du comté de Drummond a été incorporée par une Loi de la province de Québec "pour construire et exploiter un chemin de fer qui part de la ville de Drummondville, dans le comté de Drummond, pour se rendre à un endroit ou des endroits près du chemin de fer Grand Tronc, en traversant les comtés de Richmond et de Drummond, avec les pouvoirs de construire un embranchement dans les cantons de Wendover ou de Simpson et jusque dans la paroisse de Ste-Angèle, dans le comté de Nicolet et celui d'Yamaska." Par ce règlement le maire et la corporation furent autorisés à octroyer à la compagnie de chemin de fer du comté de Drummond la somme de $10,000.00 "pour aider à la construction et à l'établissement du chemin de fer ci-dessus et de ses embranchements." On a aussi pourvu dans le dit règlement à ce que "la dite somme de $10,000.00 ne puisse pas être réclamée par

la compagnie de chemin de fer avant quatre-vingt-dix jours après que le dit chemin de fer aura été accepté par les gouvernements qui le subventionneront, et avant que des wagons et des locomotives ne circulent entre Drummondville et Nicolet."

On a aussi versé au dossier de la Commission une copie certifiée des minutes d'une assemblée du conseil municipal de la paroisse de St-Léonard tenue le 23 septembre 1931, lesquelles mentionnent que la corporation de la paroisse de St-Léonard accordera un boni de $5,000.00 à la compagnie de chemin de fer du comté de Drummond "pour obtenir le service de trains que les chemins de fer Nationaux du Canada désirent maintenant enlever," et de plus, "que la compagnie de chemin de fer du comté de Drummond accepta le dit boni de $5,000,00 et les clauses des dits règlements adoptés par le conseil municipal de la paroisse de St-Léonard, le 3 octobre 1887."

On a aussi produit une copie de la convention passée en l'année 1899 entre la compagnie de chemin de fer du comté de Drummond et Sa Majesté la Reine Victoria par laquelle le chemin de fer du comté de Drummond fut vendu et transporté à Sa Majesté la Reine pour faire partie du chemin de fer Intercolonial, et, subséquemment, des chemins de fer Nationaux du Canada. Les lignes de chemins de fer comprises dans ce transport comprenaient l'embranchement de Saint-Léonard à Nicolet qui est le sujet de la présente requête. Il est à remarquer que dans cet acte de transport il n'y a pas d'engagement de la part de la Couronne à assumer ou à exécuter des obligations contractuelles de la compagnie de chemin de fer du comté de Drummond sauf celles qui étaient mentionnées dans l'acte de transport, non plus qu'il n'y est fait mention de certaines obligations de la part de la compagnie de chemin de fer du comté de Drummond au sujet d'un contrat ou d'une convention avec la ville de Nicolet ou la paroisse de Saint-Léonard. Je crois qu'on peut sérieusement douter que des contrats tels que ceux allégués par la ville de Nicolet ou la paroisse de Saint-Léonard soient susceptibles de lier la Couronne dans les circonstances précitées.

Il n'y a apparemment aucune obligation de la part de la compagnie requérante ou de ses prédécesseurs en titre de maintenir une exploitation continue sur la ligne en question. Les bonis furent payés à la compagnie de chemin de fer du comté de Drummond après que le chemin de fer eut été en exploitation durant une période de trois mois, et je ne trouve rien dans la preuve verbale ou documentaire qui imposerait à la compagnie de chemin de fer l'obligation de maintenir une exploitation continue de cette voie ferrée. L'allégation dans la requête pour obtenir la permission d'interjeter appel à l'effet que.

> " Ladite compagnie de chemin de fer du comté de Drummond, ayant accepté et reçu la somme de $10,000.00 qui lui fut payée dans le temps spécifié, à savoir: trois mois après que le parachèvement de la construction de la ligne, contracta envers la ville de Nicolet l'obligation de fournir le service de trains continu et perpétuel précité ".

n'est pas appuyée par aucune preuve soumise à la Commission. Le règlement de la ville de Nicolet établit simplement que le boni fut octroyé " pour aider à la construction du chemin de fer, etc.".

A mon avis, sur les faits exposés ci-dessus, il n'existe pas d'obligation contractuelle de la part de la compagnie requérante qui la forcerait à exploiter la ligne de chemin de fer en question. Je suis aussi d'avis qu'en vertu des dispositions de l'article 165A de la Loi des chemins de fer, la Commission a le pouvoir de rendre une ordonnance approuvant la discontinuation d'exploitation de la ligne en question. A mon avis, la Commission ne devrait pas accorder la permission d'interjeter appel sur une question de droit ou de juridiction, ou des deux. Je ne considère pas que les questions soulevées dans la requête pour obtenir la permission d'interjeter appel justifient une telle attitude. Je crois que dans la présente cause, la Commission devrait refuser la permission d'interjeter appel.

Toutefois, la question de juridiction de la Commission pour prendre connaissance de la présente requête a été soulevée d'une manière définie dans l'avis adressé pour obtenir la permission d'interjeter appel. Nonobstant la décision de la Commission, les parties intéressées peuvent s'adresser à la Cour Suprême du Canada pour obtenir la permission d'interjeter appel en vertu des dispositions de l'article 52, paragraphe 2, de la Loi des chemins de fer, sur la question de juridiction de la Commission, si tel est leur désir.

L'ordonnance à être rendue dans la présente requête devrait avoir le caractère d'une ordonnance indépendante à compter de la présente date, amendant l'ordonnance n° 53012 mentionnée ci-dessus, renvoyant la requête pour une nouvelle audition et refusant la permission d'interjeter appel. Les parties auront le délai ordinaire de trente jours pour adresser à la Cour Suprême du Canada une requête pour obtenir la permission d'interjeter appel.

OTTAWA, le 4 septembre 1936.

Le Commissaire STONE s'est rallié au jugement ci-dessus.

GARCEAU, F.-N., COMMISSAIRE EN CHEF SUPPLÉANT: (dissident)

Pour les raisons invoquées dans mon jugement dissident du 25 mars 1936, et dans la requête, j'accorderais la permission d'interjeter appel à la Cour Suprême du Canada de l'ordonnance de la Commission n° 53012, en date du 15 avril 1936, la compagnie de chemin de fer devant continuer son service en attendant le jugement sur l'appel.

Quant à la requête pour une nouvelle audition, je laisserais l'affaire en suspens jusqu'à ce que le jugement sur l'appel soit rendu.

OTTAWA, le 4 septembre 1936.

ORDER No. 53417

In the matter of the Order of the Board No. 53012, dated April 15, 1936, approving the abandonment of operation of that portion of the Canadian National Railways' Nicolet Subdivision between St. Leonard Junction and Nicolet, Quebec; and Order No. 53215, dated June 15th, 1936, made upon the application of the Town of Nicolet, extending the time for making application to the Board for leave to appeal to the Supreme Court of Canada for thirty days from the date of the said Order No. 53215, and granting leave to the Canadian National Railways, pending hearing, to suspend action in the way of dismantling the line;

And in the matter of the application for a re-hearing of the whole matter.

File No. 39310·9.

TUESDAY, the 8th day of September, A.D. 1936.

HON. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the matter at the sittings of the Board held at Nicolet, July 14, 1936, in the presence of counsel for the town of Nicolet and the Canadian National Railways, Mr. Justice Trahan appearing in person, and what was alleged; and upon reading the further written submissions filed,—

It is ordered:

1. That the said Order No. 53012, dated April 15, 1936, be, and it is hereby, amended by adding the following paragraph, namely:—

"2. That local and passenger train service between Nicolet and St. Leonard Junction shall be diverted via St. Gregoire and Aston Junction. Connecting tracks shall be constructed by the Applicants at St. Gregoire and Aston Junction to provide straightaway movements between St. Hyacinthe and Nicolet."

2. That the applications for rehearing and for leave to appeal to the Supreme Court of Canada be, and they are hereby, refused.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53415

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 165A of the Railway Act, for approval of the abandonment of operation of the portion of its Nickel Subdivision between O'Donnell, mileage 16·5, and Turbine, mileage 32·9, a distance of 16·4 miles.

File No. 39309.8.

TUESDAY, the 8th day of September, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer and the Division Engineer of the Board,—

It is ordered: That the abandonment of operation of the portion of the applicant company's Nickel Subdivision between O'Donnell, mileage 16·5, and Turbine, mileage 32·9, in the province of Ontario, be, and it is hereby, approved.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53416

In the matter of the joint application of the Canadian Pacific Railway Company and the Canadian National Railways for permission to cancel, on less than statutory notice, a rate on marcaroni, spaghetti, vermicelli, and canned goods from Montreal to Halifax and Saint John, issued in competition with water service.

File No. 27612.141.

TUESDAY, the 8th day of September, A.D. 1936.

HON. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon its appearing that the companies have been unable to obtain the volume of business anticipated and, therefore, no longer wish to meet the water competition above named,—

It is ordered: That the Canadian Pacific Railway Company and the Canadian National Railways be, and they are hereby, permitted to cancel, on one day's notice, the said rate on macaroni, spaghetti, vermicelli, and canned goods

from Montreal, Quebec, to Halifax, Nova Scotia, and Saint John, New Brunswick, published in Canadian National Railways' Tariff C.R.C. No. E. 2115 and Canadian Pacific Railway Company's Tariff C.R.C. No. E. 4775.

H. GUTHRIE
Chief Commissioner.

ORDER No. 53440

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13.

THURSDAY, the 10th day of September, A.D. 1936.

HON. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board Orders:

1. That the toll published in item 59 of Supplement No. 44 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 44 to Tariff C.R.C. No. 851, approved herein, is 25 cents per 100 pounds.

H. GUTHRIE
Chief Commissioner.

ORDER No. 53441

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13.

THURSDAY, the 10th day of September, A.D. 1936.

HON. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item 4B of Supplement No. 6 to Tariff C.R.C. No. 879, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 6 to Tariff C.R.C. No. 879, approved herein, is 5½ cents per 100 pounds.

H. GUTHRIE
Chief Commissioner.

ORDER No. 53442

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822·13.

THURSDAY, the 10th day of September, A.D. 1936.

HON. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 1012, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of Section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 1012, approved herein, are as follows:—

Miles	Cents per 100 pounds	Miles	Cents per 100 pounds
5	5½	70	17½
10	6½	80	17½
15	9½	100	18½
20	11½	120	21½
30	12½	125	21½
40	14	150	24
45	14½	170	25
50	15	175	25
65	16	200	26

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53443

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822·13.

THURSDAY, the 10th day of September, A.D. 1936.

HON. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 1014, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of Section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 1014, approved herein, are as prescribed in Order of the Board No. 52400, dated October 28, 1935, and Order No. 52448, dated November 8, 1935.

H. GUTHRIE,
Chief Commissioner.

ORDER NO. 53460

In the matter of the tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.2.

WEDNESDAY, the 16th day of September, A.D. 1936.

HON. HUGH GUTHRIE, K.C.,
Chief Commissioner.

G. A. STONE,
Commissioner.

It is ordered:

That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement	11	to	Tariff	C.R.C. No. E-1227
"	37	to	"	C.R.C. No. E-1238
"	32	to	"	C.R.C. No. E-1504
"	6	to	"	C.R.C. No. E-1543
"	127	to	"	C.R.C. No. E-1631
"	12	to	"	C.R.C. No. E-1671
"	64	to	"	C.R.C. No. E-1804
"	31	to	"	C.R.C. No. E-1911
"	23	to	"	C.R.C. No. E-2248
"	18	to	"	C.R.C. No. E-2382
"	5	to	"	C.R.C. No. E-2408
"	2	to	"	C.R.C. No. E-2444
"	2	to	"	C.R.C. No. E-2448

Tariff C.R.C. No. E-2453
" C.R.C. No. E-2455
" C.R.C. No. E-2456
" C.R.C. No. E-2464
" C.R.C. No. E-2465

H. GUTHRIE,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR JULY, 1936

Railway accidents	263 with	17 killed and	266 injured.
Railway accidents at Highway crossings	27 with	8 killed and	34 injured.
	290	25	300

	Killed	Injured
Passengers	1	54
Employees	3	192
Others	21	54
	25	300

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents	
	Nova Scotia
1	Automobile—Ran into side of engine. Licence NS.D-400-A.
1	Auto Truck—Driver ran into side of train. Licence NS.HC-17220.
	New Brunswick
1	Automobile—Trying to extricate auto from box car, second auto bumped into first auto. Licence NB-W-3974.
	Quebec
1	Automobile—Failed to stop for crossing. Licence Ont. 34434.
1	Automobile—Stalled on track and struck by train. Licence Que. 64593.
1	Automobile—Ran into side of track motor. Licence Que. H. 32616.
1	Auto Truck—Driver tried to beat train over crossing. Licence Que. F. 11261.
1	Motorcycle—Driver ran into side of tramway. Licence number not given.
1	Pedestrian—Deaf. Walked into path of train.
	Ontario
6	Automobiles—Driver ran into side of train. Licence Ont. HK-978 (J. L. Phillips, Tweed, Ont.); Ont. W2441 (M. Bizard, Windsor, Ont.); Ont. LZ-768 (G. Simpson, Vars, Ont.); Mich. M. 4393 (Frank Allen, 3rd Ave., Detroit, Mich.); Ont. FA-812 (Frank Nortin, Beeton, Ont.); Ont. Y-4910 (Mrs. E. Hill, 63 Glenwood Ave., London, Ont.).
3	Automobiles—Driver ran onto crossing in front of approaching train. Licence Ont. 381 (Melvin Doyle, Roches Point, Ont.); Ont. HN-99 (Peter Grozelle, Lindsay, Ont.); D.O.F.C. 181-234 (O. M. Gold, Washington, D.C.).
1	Auto Truck—Driver ran into side of train. Licence Ont. 60550-C (Mrs. Violet Smith).
	Manitoba
1	Automobile—Drove onto crossing in front of approaching train and was struck. Licence Man. 47547.
1	Automobile—Driver attempting to beat train, struck. Licence Man. 34-916
	Saskatchewan
1	Automobile—Struck by track motor. Licence Sask. 58-072.
	Alberta
1	Automobile—Drove onto crossing in front of approaching train. Licence Alta. 67-842.
1	Automobile—Stalled on crossing. Licence Alta. 34164.
1	Auto Truck—Drove onto crossing ahead of approaching train. Licence Alta. D-12890.
	British Columbia
1	Automobile—Drove onto crossing in front of train and was struck. Licence BC-78427.
1	Auto Truck—Drove onto crossing in front of train and was struck. Licence BC-C-20164.

Of the 27 Accidents at Highway Crossings, all 27 occurred at Unprotected crossings. Twenty of the accidents occurred during the daylight hours and seven at night.

September 11, 1936.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXVI Ottawa, October 15, 1936 No. 15

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Application of the Dominion Atlantic Railway Company, Kentville, N.S., for an Order granting authority to discontinue operation of regular passenger service on its North Mountain Branch (Centreville to Weston).

File No. 27563.213

JUDGMENT

COMMISSIONER STONE:

On March 9, 1936, the Dominion Atlantic Railway Company applied to the Board for authority to discontinue future operation of all regular train service on its North Mountain Branch between Centreville and Weston (14·47 miles), and advised that there was no mail nor express service in effect, but that the line would be kept open for carload and less-than-carload freight which would be taken care of by extra trains as business demanded.

Opposition to the discontinuance of regular passenger service was filed early in May, 1936, by the Municipal Council of Kings County. The case was heard at Kentville, N.S., on August 27 last. At the hearing counsel for both the applicant and the municipality, together with several witnesses, appeared.

From the evidence and written submissions now before the Board it is shown that passenger traffic was carried on mixed trains out of Kentville, N.S., to Weston, N.S., a distance of 19½ miles. The engine and train crew assigned to this run were also required to do some switching in Kentville yard.

A regular daily service has been maintained from September 17 until March 2, a tri-weekly service until April 1, and for the balance of the year the regular service was one trip per week to accommodate patrons handling fertilizer and apples.

The line involved in this application serves a fruit and farming district. No industries are located along this line which parallels the main line of the Dominion Atlantic Railway, these lines being from three to six miles apart.

In 1934 a total of 4,894 passengers were carried, an average of 17 passengers per trip; and in 1935 there were 3,662 passengers carried, making an average of 11 passengers per trip. Between the months of April and September, for these two years, passengers carried were as follows:—

Month	1934	1935
April	347	413
May	84	108
June	73	34
July	56	46
August	60	66
September	21	91

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There are no booking offices on the branch and tickets are sold to passengers on the train by the conductor to points between Weston and Kentville. The following revenue was recorded for passenger traffic:—

1933	1934	1935
$530.00	$1,001.00	$792.00

It was alleged that "practically every farmer in the territory owned an automobile," which would appear to be the reason for the light passenger traffic as shown in the railway company's statements.

Allowing 50 per cent of the earnings accruing to other lines of the system on traffic consigned to and from the branch, a profit of $10,073 was shown for the year 1933; $9,757 for 1934; and $3,260 for 1935. However, expenses incurred on account of transportation, maintenance of way and structure, and other charges created a direct operating loss on the branch line as follows:—

1933	1934	1935
$16,024.00	$19,892.00	$22,520.00

These figures show a substantial increase in operating losses in 1935 over 1933.

The bulk of carload freight moving begins about the middle of September and continues until the latter part of February; some years it continues until March, but the fruit warehouses are usually closed by March 1.

Counsel for the Municipality of Kings County emphasized the necessity of regular schedule train service being maintained on time to take care of passenger traffic, parcel and small freight. He later submitted a brief emphasizing the necessity for continued regular schedule train service, stating that unscheduled trains, even with passenger facilities provided, would be of no real service to the people of the community. He suggested that trains to accommodate passengers and l.c.l. freight should be operated in winter at least tri-weekly from December to May on a schedule similar to that which heretofore existed.

In view of what is before the Board in connection with this case, I am of the opinion that a schedule mixed train service to accommodate passenger and l.c.l. freight traffic should be operated on a tri-weekly basis from the beginning of December until the end of April during each year.

OTTAWA, September 26, 1936.

The Chief Commissioner and the Deputy Chief Commissioner concurred.

ORDER No. 53504

In the matter of the application of the Dominion Atlantic Railway Company, hereinafter called the "Applicant Company," for leave to discontinue operation of regular passenger service on its North Mountain Branch (Centreville to Weston).

File No. 27563.213

FRIDAY, the 2nd day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Kentville, Nova Scotia, August 27, 1936, in the presence of counsel for the applicant company and the Municipality of King's County, and what was alleged,—

It is ordered: That the applicant company be, and it is hereby, required to operate a mixed train service, to accommodate passenger and L.C.L. freight

traffic, on its North Mountain Branch (Centreville to Weston, Nova Scotia), on a tri-weekly basis from the beginning of December in each year until the end of April in the following year.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53468

In the matter of the application of the Express Traffic Association of Canada for approval of proposed Supplement "G" to the Express Classification for Canada No. 8, C.R.C. No. E.T. 1769.

File No. 4397.118

FRIDAY, the 18th day of September, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon its appearing that the question of the cost of handling newspapers and magazines through the mails is now being considered by a Government committee and the Board has been requested to defer action in connection with item 13a of the said proposed Supplement; also that the applicant has asked to have item "C" of the Money Classification changed for the purpose of clarification,—

It is ordered: That the said Supplement "G" to the Express Classification for Canada No. 8, C.R.C. No. E.T. 1769, be, and it is hereby, approved, with the exception of item 13a, and with the following change immediately under the words, "TARIFF OF RATES ON MONEY, SECURITIES, ETC."

"Page 35 amend to read:

C—(1) CURRENCY (including mutilated Bank Notes, but not including Cancelled Bank Notes), GOLD COIN, and GOLD DUST; for rates see Scale "P"."

And that the said Supplement be published as No. 7 to Express Classification for Canada No. 8, C.R.C. No. E.T. 1769.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53464

In the matter of the application of the Detroit and Windsor Subway Company and the Detroit and Canada Tunnel Company, hereinafter called the "Applicant Companies," for approval of Supplement No. 7 to Tariff C.R.C. No. 18, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5.

SATURDAY, the 19th day of September, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant companies' said Supplement No. 7 to Tariff C.R.C. No. 18, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5, be, and it is hereby, approved.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53493

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 24th day of September, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll charged on baskets, L.C.L., in item 30B of Supplement No. 8 to Tariff C.R.C. No. 860, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 8 to Tariff C.R.C. No. 860, approved herein, is 33½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53494

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 24th day of September, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item 79 of Supplement No. 32 to Tariff C.R.C. No. 906, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 32 to Tariff C.R.C. No. 906, approved herein, is 5 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner,

ORDER No. 53495

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 24th day of September, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item 102 of Supplement No. 10 to Tariff C.R.C. No. 907, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 10 to Tariff C.R.C. No. 907, approved herein, is 10½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53496

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 24th day of September, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item 101 of Supplement No. 11 to Tariff C.R.C. No. 907, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 11 to Tariff C.R.C. No. 907, approved herein, is 7 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53497

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

THURSDAY, the 24th day of September, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 747, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 747, approved herein, is 4 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53488

In the matter of the application of the Vancouver Harbour Commissioners, hereinafter called the "Applicants," for approval of Tariff C.R.C. No. B-3 covering the tolls to be charged in respect of the Second Narrows Bridge at Vancouver, British Columbia, on file with the Board under file No. 15732.8.

MONDAY, the 28th day of September, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicants' Tariff C.R.C. No. B-3, covering standard maximum tolls to be charged in respect of the Second Narrows bridge at Vancouver, in the province of British Columbia, on file with the Board under file No. 15732.8, be, and it is hereby, approved.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53507

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

THURSDAY, the 1st day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the joint tolls published to Cody's, Bonny River, Hartland, and Grand Falls, New Brunswick, in Supplement No. 6 to Tariff C.R.C. No. E-1543 filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3; the Canadian Pacific Railway Company's and the Fredericton and Grand Lake Coal and Railway Company's proportion to be reported as follows:—

	Cents per 100 pounds
To Cody's, N.B.	6½
Bonny River, N.B.	8
Hartland, N.B.	6½
Grand Falls, N.B.	8

2. And the Board hereby certifies that the Canadian Pacific Railway Company's or the Fredericton and Grand Lake Coal and Railway Company's proportion of the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 6 to Tariff C.R.C. No. E-1543, approved herein, are as follows:—

	Cents per 100 pounds
To Cody's, N.B.	8
Bonny River, N.B.	10
Hartland, N.B.	8
Grand Falls, N.B.	10

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53508

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.8

THURSDAY, the 1st day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 52, filed by the Sydney and Louisburg Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 52, approved herein, is 6 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53509

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 1st day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item 141 of Supplement No. 19 to Tariff C.R.C. No. E-4368, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 19 to Tariff C.R.C. No. E-4368, approved herein, is $1.75 per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53510

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 1st day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item 116 of Supplement No. 10 to Tariff C.R.C. No. E-4369, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 10 to Tariff C.R.C. No. E-4369, approved herein, is $1.69 per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53511

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 1st day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 1011, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion of tariff tolls to be reported as shown below.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 1011, approved herein, are also shown below.

From		Cents per 100 pounds for all groups					
		Via Halifax, N.S.			Via Saint John, N.B., or West Saint John, N.B.		
		A	B	C	A	B	C
Bridgetown, N.S.	Tariff	20	20	18	7.6	7.6	7.7
	Normal	24½	24½	21½	9.5	9.5	9.6
Lawrencetown, N.S.	Tariff	..	20	18	....	7.9	6.6
	Normal	..	24½	22½	....	8.7	7.9
Middleton, N.S.	Tariff	20	20	18	8.2	8.2	7.5
	Normal	24½	24½	22½	10.3	10.3	9.4
Kingston, N.S.	Tariff	..	20	18	....	7.7	6.6
	Normal	..	24	22	....	8.8	7.9
Aylesford, N.S.	Tariff	20	20	18	7.7	7.7	6.6
	Normal	25	24	22	8.8	8.8	7.9
Berwick, N.S.	Tariff	..	20	17	....	7.6	6.5
	Normal	..	24	21½	....	9.5	8.1
Waterville, N.S.	Tariff	20	20	17	10.2	10.2	8.6
	Normal	25	24	21½	12.7	12.7	10.7
Lakeville, N.S.	Tariff	..	20	18	....	10.3	9.5
	Normal	..	24	22	....	12.5	11.8
Port Williams, N.S.	Tariff	..	16	15	....	7.8	7.1
	Normal	..	19	18	....	9.5	8.9
Wolfville, N.S.	Tariff	..	16	15	....	7.8	7.1
	Normal	..	19	18	....	9.5	8.9

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53512

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates A

File No. 34822.14

THURSDAY, the 1st day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 749, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 749, approved herein, are as follows:—

	Cents per 100 pounds
Ex Canadian National Railways	6½
Local	7

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53513

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.15

THURSDAY, the 1st day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published to North Devon, N.B., Trois Rivières and Cap de la Madeleine, Que., in Supplement No. 8 to Tariff C.R.C. No. 194, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 8 to Tariff C.R.C. No. 194, approved herein, are as follows:—

To	Cents per ton, 2,000 pounds
North Devon, N.B.	115
Trois Rivieres, Que.	250
Cap de la Madeleine, Que.	

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53514

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.15

THURSDAY, the 1st day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 196, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 196, approved herein, is $2.45 per ton of 2,000 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53515

In the matter of the proposed discontinuance of operation of the Crow's Nest Southern Railway (Great Northern Railway) Company's line of railway between Fernie and Newgate, in the Province of British Columbia.

File No. 39137

FRIDAY, the 2nd day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*
F. N. GARCEAU K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the matter at the sittings of the Board held at Fernie, British Columbia, September 19, 1936, in the presence of counsel for the Crow's Nest Southern Railway Company, the province of British Columbia, the city of Fernie, and the Western Pine Lumber Company, Limited, the evidence offered, and what was alleged,—

It is ordered: That the Crow's Nest Southern Railway Company (Great Northern Railway Company) be, and it is hereby, granted leave to discontinue the operation of the said line of railway between Fernie and Newgate, in the province of British Columbia, subject to and upon the conditions following, namely:—

(*a*) That the rails, ties, buildings, bridges, and fences on the said line of railway be not removed for a period of one year from the date of this order; and

(*b*) That this order is based on the understanding between the parties that the Great Northern Railway Company's line from Newgate, in the province of British Columbia, to Rexford, in the state of Montana, shall not be dismantled until after the expiration of the said one year from the date of this order.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53520

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 342 of the Railway Act, for relief from posting certain tariffs at stations at which the population is over 1,000 and not over 2,000, and at stations at which the population is over 2,000 and not over 10,000.

File No. 39362

FRIDAY, the 2nd day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered and declared:

1. That the applicants be, and they are hereby, relieved from posting tariffs to the following extent, namely:—

(*a*) That at stations at which the population is over 1,000 and not over 2,000 only the Canadian Freight Classification, standard and local specific class tariffs, and such other tariffs as are frequently used, be

posted; and that other tariffs for the use of agents at such stations be posted in the office of the Division Freight Agent in charge of that territory; and

(*b*) That at stations at which the population is over 2,000 and not over 10,000 tariffs that are never used need not be posted.

2. That rates required for occasional shipments for which tariffs are not posted at the station concerned will be secured by telegraph from the Division Freight Agent in charge of the territory.

3. That, in the event of any tariff not on file at a station being required on account of frequent movement, or if any shipper requests that a tariff be posted at a particular station, such tariff shall immediately be placed on file at that station.

4. That this order is subject to amendments or revision in the event such action appears necessary in the public interest.

H. GUTHRIE,
Chief Commissioner.

GENERAL ORDER No. 557

In the matter of the General Order of the Board No. 539, dated June 18, 1935, approving and adopting rules covering the preparation of accounts to apply to joint projects undertaken under order of the Board; and the joint application of the Canadian Pacific and the Canadian National Railway Companies for an Order amending the said General Order No. 539 to provide for an additional allowance of 2 per cent on all items of labour to cover expenditures on account of Workmen's Compensation.

File No. 11026·74

TUESDAY, the 6th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading the application and the report and recommendation of the Division Engineer of the Board,—

It is ordered: That the said General Order No. 539, dated June 18, 1935, be, and it is hereby, amended by adding at the end of the paragraph on page 2 thereof under the heading, "Workmen's Compensation," the words, "To all items of labour, including wages of foremen, there may be added a premium of 2 per cent to cover expenditures on account of Workmen's Compensation."

H. GUTHRIE,
Chief Commissioner,
Board of Railway Commissioners for Canada.

SUMMARIES OF ORDERS ISSUED BY THE BOARD OF RAILWAY COMMISSIONERS

53382. Aug. 21—Approving agreement between Bell Telephone Co. and Comm'rs for Telephone System of Mun. of Tp. of Pelee Island.

53383. Jan. 30—Extending until Nov. 1, 1936, time within which Transp. Comm. of Maritime Board of Trade, et al, may apply for leave to appeal from Board's Order 52644, refusing application for reduction in rates on potatoes.

53384. Aug. 22—Directing C.P.R. to install automatic bell and wigwag at crossing near Kaladar, Ont.

53385. Aug. 25—Authorizing T.H. & B. Ry. to construct highway bridge carrying Dundurn street, Hamilton, Ont., over their tracks.

53386. Aug. 27—Permitting C.N. Rys. to file supplement to tariff C.R.C. E-2460 changing rate on washing and ironing machines from Toronto to Montreal from 39 cents per 100 pounds to 40 cents per 100 pounds.

53387. Aug. 31—Authorizing Sask. Dep't Highways to construct overhead crossing of C.P.R. on Highway 39 in SE. ¼ Sec. 36-1-7 W.2M., near Roche Percée, Sask.

53388. Aug. 31—Approving location and details of C.N. Rys.' proposed new station to be erected at Field, Ont.

53389. Aug. 25—Approving traffic agreement between Bell Telephone Co. and C.P.R. covering connection via North Bay of telephone system operated by C.P.R.

53390. Aug. 31—Approving relocation of portion C.P.R. spur serving Spencer Fuel Co., Ltd., in lot 3, con. 5, tp. York, Ont.

53391. Sept. 2—Declaring C.P.R. crossing one-half mile north of Bath, N.B., protected to Board's satisfaction.

53392. Sept. 2—Declaring C.P.R. crossing, second west of Louiseville Station, Que., protected to Board's satisfaction.

53393. Sept. 2—Authorizing C.P.R. to construct spur to serve Pace Oil Refineries, Ltd., at Carman, Man.

53394. Sept. 3—Declaring Great Northern Ry. crossing of Sunbury Road about six miles south of New Westminster, B.C., protected to Board's satisfaction.

53395. Sept. 5—Extending until Jan. 1, 1937, time within which V.V. & E. Ry. & Nav. Co. may carry out provisions of Order 51690, *re* train service between International Boundary and Princeton, B.C.

53396. Sept. 3—Authorizing Nova Scotia Dep't Highways to construct diversion of highway at Clementsport, closing crossing over the Dominion Atlantic Ry. at that point.

53397. Sept. 3—Authorizing Sask. Dep't Highways to construct road diversion and overhead crossing of C.P.R. on north boundary of secs. 32 and 33-35-5 and sec. 5-36-14 W3M., Sask.

53398. Sept. 3—Authorizing C.P.R. to construct proposed extension to branch line and spur to serve Cambrian Coal Co., Ltd., near Rosedale, Alta.

53399. Sept. 2—Authorizing New York Central R.R. (M.C.R.) to remove caretaker and close station at Townsend, Ont.

53400. Sept. 3—Authorizing C.N. Rys. to remove caretaker and close station at Longwood, Ont.

53401. Sept. 3—Authorizing Sask. Dep't Highways and Transp. to construct overhead crossing of C.N. Rys. on Provincial Highway No. 40 near Redberry, Sask.

53402. Sept. 3—Requiring the Mun. of Oliver to establish and maintain sight lines at crossing of C.P.R. east of Murillo, Ont.

53403. Sept. 3—Authorizing Quebec Dep't Roads to construct road diversion north of Alcove, Que., and closing crossing over C.P.R.

53404. Sept. 3—Authorizing C.P.R. and County of Peel, Ont., to enter upon lands of A. Goodfellow and A. Treble, in lots 10 and 11, con. 5, tp. Albion, to remove obstructions to view at crossing one mile north of Bolton Station, Ont.

53405. Sept. 10—Declaring C.N. Rys. crossing of Parkhill Road, Peterborough,, Ont., satisfactorily protected so long as present speed limitation of 10 miles an hour is in effect.

53406. Sept. 5—Declaring C.P.R. crossing of Shaughnessy street, near Coquitlam, B.C., protected to Board's satisfaction so long as speed limitation of 10 miles an hour is in effect.

53407. Sept. 5—Declaring C.P.R. crossing of Riverside street, Sudbury, Ont., satisfactorily protected so long as speed limitation of 10 miles an hour is in effect.

53408. Sept. 4—Approving Bell Telephone Co's tariff C.R.C. No. 6186 covering exchange rates at Granby, Que.

53409. Sept. 4—Authorizing Ont. Dep't Northern Development to construct highway crossing over C.N. Rys. at mileage 39·5 Algonquin Park Road, con. 2, tp. Canisbay, Dist. Muskoka, Ont.

53410. Sept. 4—Authorizing C.P.R. to dispense with services of towerman and to make approach signals on both lines non-operative and fixed at crossing over C.N. Rys. near Carman, Man.

53411. Sept. 4—Authorizing C.P.R. to dispense with servics of towerman and make approach signals on both lines non-operative and fixed at caution at crossing over C.N. Rys. near Roland, Man.

53412. Sept. 4—Authorizing Sask. Dep't Highways and Transp. to construct diversion of Highway No. 13 through secs. 13, 14 and 15-8-1 W3M., Sask., and close crossings of C.P.R. on south boundary of said sections.

53413. Sept. 5—Authorizing Nova Scotia Dep't Highways to make certain changes to crossing of C.N. Rys. 1·44 miles west of James River Stn., N.S.

53414. Sept. 5—Authorizing C.P.R. to construct spur to serve Dominion Coal & Wood, Ltd., at Islington, Ont.

53415. Sept. 8—Approving abandonment of operation by C.P.R. of its Nickel Subd'n, between O'Donnell and Turbine, Ont. (16·4 miles).

53416. Sept. 8—Authorizing C.P.R. and C.N. Rys. to cancel rate on macaroni, spaghetti, vermicelli and canned goods from Montreal to Halifax and Saint John, published in C.N. Rys. tariff C.R.C. No. E.2115 and C.P.R. tariff C.R.C. No. E.4775.

53417. Sept. 8—Amending Order 53012, April 15, 1936, by adding a paragraph directing that local and passenger train service between Nicolet and St. Leonard be diverted via St. Gregoire and Aston Junction, Que., connecting tracks to be constructed by C.N. Rys. at St. Gregoire and Aston Junction to provide straightaway movements between St. Hyacinthe and Nicolet; also refusing application for rehearing and for leave to appeal to Supreme Court of Canada.

53418. Sept. 8—Declaring C.N. Rys. crossing, first east of McKay Station, N.S., protected to Board's satisfaction.

53419. Sept. 8—Declaring C.P.R. crossing one mile north of Tillsonburg, Ont., protected to Board's satisfaction.

53420. Sept. 8—Declaring C.P.R. crossing near Brooklands, Man., protected to Board's satisfaction.

53421. Sept. 8—Authorizing C.N. Rys. to operate over subway constructed between London & Port Stanley Ry. station and C.N. Rys.' new concourse at London, Ont.

53422. Sept. 8—Refusing application of C.N. Rys. to vary terms of Order 24343, Oct. 19, 1915, to provide that cost of maintenance of protection at Lorne Park crossing, Ont., be borne 25 per cent by C.N. Rys. and 75 per cent by Tp. Toronto, in place of present basis of 75 per cent by C.N. Rys. and 25 per cent by Tp. Toronto.

53423. Sept. 8—Authorizing C.N. Rys. to construct spur to serve Consolidated Paper Corpr'n, Ltd., across public road at St. Casimir, Que.

53424. Sept. 10—Authorizing C.N. Rys. to reconstruct bridge over Carrot Creek mileage 105·4 Wabamun Subd'n, Alta.

53425. Sept. 8—Directing Tp. Mono, Ont., to widen approaches to C.P.R. crossing at mileage 2·19 Owen Sound Subd'n, making a top of 24 feet on a 6½ per cent grade on south side and 5 per cent grade on north side.

53426. Sept. 10—Authorizing C.P.R. to construct spur to serve Mickle, Dyment & Son, Ltd., at Toronto, Ont.

53427. Sept. 10—Authorizing P.E.I. Dep't Public Works to establish sight lines at crossing at C.N. Rys. at mileage 6·25 Kensington Sd.

53428. Sept. 8—Authorizing Sask. Dep't Highways and Transp. to construct overhead crossing of C.N. Rys. on Provincial Highway No. 2 near Prince Albert, Sask.

53429. Sept. 8—Authorizing Sask. Dep't Highways and Transp. to construct diversion of highway and overhead crossing of C.P.R. near Mortlach, Sask. (Secs. 25 and 30-17-29 and 30 W2M.).

53430. Sept. 8—Authorizing Quebec Dep't Roads to construct diversion of Highway No. 46 along south side of Nipissing Central Ry. from mileage 53·2, a distance of 6,544 feet, and to close two existing crossings.

53431. Sept. 8—Authorizing Ont. Dep't Northern Development to construct a diversion under C.P.R. bridge over the Wabigoon River at Dryden, Ont.

53432. Sept. 8—Authorizing Ont. Dep't Northern Development to construct a diversion on east side of C.P.R. track in lots 3 and 4, cons. 1 and 2, tp. Bigwood, dist. Nipissing, and closing crossing.

53433. Sept. 8—Authorizing town of New Toronto, Ont., to construct subway under C.N. Rys. at Eighteenth street, New Toronto.

53434. Sept. 8—Authorizing Nova Scotia Dep't Highways to construct diversion of highway at Auld's Cove, between Monastery and Mulgrave, N.S., and closing two crossings over C.N. Rys.

53435. Sept. 10—Directing C.N. Rys. to install automatic bell and wigwag signal at crossing of Gouin Boulevard, mileage 5·6 Montfort Subd'n, Que.
53436. Sept. 11—Declaring C.P.R. crossing, first east of St. Joachim Station, Ont., protected to Board's satisfaction.
53437. Sept. 11—Declaring C.P.R. crossing, first east of Drumbo Station, Ont., protected to Board's satisfaction.
53438. Sept. 11—Declaring C.N. Rys. crossing of No. 7 Highway (Mill street) just west of Acton, Ont., protected to Board's satisfaction.
53439. Sept. 11—Authorizing C.N. Rys. to remove the caretaker at Harley Station, Ont.
53440. Sept. 10—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls
53441. published in tariffs and supplements filed by Dominion Atlantic Ry.
53442. under sec. 9.
53443.
53444. Sept. 11—Authorizing C.N. Rys. to remove the caretaker at Kingscourt Station, Ont.
53445. Sept. 12—Authorizing C.N. Rys. to construct spur to serve Silver Tip Biscuit Co., Ltd., across Albert street, Moncton, N.B.
53446. Sept. 12—Authorizing C.P.R. to construct spur to serve Guelph Cask, Veneer & Plywood Co., Ltd., at Mattawa, Ont.
53447. Sept. 12—Directing C.P.R. to install automatic bell and wigwag in addition to existing bell at crossing east of Belleville Station, Ont.
53448. Sept. 12—Directing C.N. Rys. to install automatic bell and wigwag in addition to existing bell at crossing of Cannifton road, west of Belleville, Ont.
53449. Sept. 12—Authorizing Ont. Dep't Northern Development to construct a subway under C.N. Rys. in lot 14, con. 6, tp. Field, dist. Sturgeon Falls, Ont.
53450. Sept. 12—Directing C.P.R. to install automatic bell and wigwag signal in addition to existing bell at crossing of provincial Highway No. 2, 2·1 miles west of Belleville Station, Ont.
53451. Sept. 14—Refusing application of Charles Ouellet, of Isle Verte, Que., for an Order requiring C.N. Rys. to change location of his farm crossing from the easterly limit to the westerly limit of his property.
53452. Sept. 14—Directing the town of Kentville, in conjunction with landowners, and the Dominion Atlantic Ry. to reconstruct and maintain certain conduits and culverts to provide suitable drainage along the right of way at Dennison avenue crossing and Mill Brook bridge, Kentville, N.S.
53453. Sept. 15—Authorizing Ontario Dep't Highways to construct diverted highway across Doran's siding, immediately north of new overhead crossing of C.P.R. at Sharbot Lake, Ont., and closing crossing west of Imperial Oil plant.
53454. Sept. 15—Authorizing Nova Scotia Dep't Highways to construct diversion of highway and new crossing of C.N. Rys. at mileage 74·74, Chester Subd'n, between Mahone and Bridgewater, N.S.
53455. Sept. 15—Authorizing Nova Scotia Dep't Highways to change location of crossing over C.N. Rys. 1·13 miles east of James River Station, N.S.
53456. Sept. 14—Authorizing tp. of Albion, Ont., to improve view at crossing opposite lots 15 and 16, con. 4, tp. Albion, Ont.
53457. Sept. 15—Authorizing New Brunswick Dep't Public Works to construct a diversion of highway along north side of C.N. Rys. between mileage 96·9 and 98·5 at Quisibis, N.B.
53458. Sept. 15—Authorizing Ont. Dep't Highways to construct subway under C.N. Rys. on Highway No. 7, lots 35 and 36, con. 1, tp. Markham, at Langstaff, Ont.
53459. Sept. 15—Authorizing New Brunswick Dep't Public Works to construct diversion of highway on north side of C.N. Rys. at Thibodeau, N.B.
53460. Sept. 16—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in tariffs filed by C.N. Rys. under sec. 3.
53461. Sept. 16—Authorizing C.P.R. to remove crossover, with outlying switch lock and two signals, at junction of C.N. Rys.' transfer track with Grand Junction Ry. at Belleville, Ont.
53462. Sept. 17—Extending until Mar. 13, 1937, time within which C.P.R. may complete spur for Manitoba penitentiary at Stony Mountain, Man.
53463. Sept. 17—Approving installation of automatic signals at crossing of C.N. Rys. and Montreal & Southern Counties Ry. at Ranelagh, Que.
53464. Sept. 19—Approving Detroit & Windsor Subway Co., and Detroit & Canada Tunnel Co., supplement No. 7 to tariff C.R.C. No. 18 covering tolls to be charged in respect of Detroit Tunnel.
53465. Sept. 19—Approving revised location of C.N. Rys. from mileage 98·63 to 99·06 Ashcroft Subd'n, and authorizing reconstruction of bridge over Nakalia creek, mileage 98·8 Ashcroft Subd'n, B.C.
53466. Sept. 18—Declaring C.N. Rys. crossing, first west of St. Paul Station, Alta., protected to Board's satisfaction.
53467. Sept. 18—Authorizing Ont. Dep't Highways to construct crossing over double track of C.N. Rys. by subway in tp. Stamford, Ont.

53468. Sept. 18—Approving Supp. "G" to Express Classification for Canada No. 8, C.R.C. No. E.T. 1769, with exception of item 13A.

53469.—Sept. 17—Authorizing C.N. Rys. and C.P.R. to operate their trains over crossing of their railways near Mayfair, Sask., without stopping.

53470. Sept. 18—Authorizing C.N. Rys. to reconstruct bridge over Siwash creek, mileage 23·4 Yale Subd'n, B.C.

53472. Sept. 22—Authorizing C.P.R. to construct spur to serve Red River Grain Co., Ltd., at St. Boniface, Man.

53471. Sept. 23—Authorizing Nova Scotia Dep't Highways to construct diversion of public highway at Boutilier Point, N.S., closing two crossings over C.N. Rys.

53473. Sept. 21—Declaring C.N. Rys. crossing, first west of Clavet Station, Sask., protected to Board's satisfaction.

53474. Sept. 21—Declaring C.N. Rys. crossing, mileage 80·23, Margo Subd'n, in Mun. of Sasman, Sask., protected to Board's satisfaction.

53475. Sept. 21—Declaring Lake Erie & Northern Ry. crossing of Townsend street, Simcoe, Ont., satisfactorily protected so long as speed limitation of 10 miles an hour is in effect.

53476. Sept. 22—Authorizing Pere Marquette Ry. to remove station building at Shedden, Ont.

53477. Sept. 23—Extending until Nov. 6, 1936, time within which C.N. Rys. may install bells and wigwags at crossing of Cadillac street, Montreal, Que.

53478. Sept. 23—Directing C.P.R. to install double bells and wigwags at crossing 2·4 miles west of Agincourt Station, Ont.

53479. Sept. 22—Declaring C.P.R. crossing first west of Virden Station, Man., protected to Board's satisfaction.

53480. Sept. 22—Directing C.N. Rys. to install double bells and wigwags at crossing of St. Joseph street, west of Drummondville Stn., Que.

53481. Sept. 22—Authorizing Ont. Dep't Northern Development to construct crossing over C.N. Rys. in lot 14, con. 8, tp. Dysart, co. Haliburton, Ont.

53482. Sept. 22—Authorizing C.N. Rys. to remove caretaker at Eastwood Station, Ont.

53483. Sept. 22—Authorizing David J. M. Gwilliam of Namao, Alta., to construct mine tunnel under Northern Alberta Rys. in S.E. ¼ sec. 6-55-24, W4M., Alta.

53484. Sept. 24—Declaring C.P.R. crossing immediately west of Locust Hill Station, Ont., protected to Board's satisfaction.

53485. Sept. 24—Authorizing C.P.R. to construct spur to serve Howard C. Miller, at Woodstock, Ont.

53486. Sept. 24—Authorizing Sask. Dep't Highways and Transp. to construct temporary crossing over C.P.R. in S.E. ¼ sec. 36-1-7, W2M., Sask.

53487. Sept. 26—Authorizing Bell Telephone Co. to construct, reconstruct, erect and re-erect its telephone lines and plant along and across certain streets in City of Ottawa, Ont.

53488. Sept. 28—Approving Vancouver Harbour Comm'rs tariff C.R.C. No. B-3, covering standard maximum tolls to be charged in respect of Second Narrows bridge at Vancouver, B.C.

53489. Sept. 25—Declaring C.N. Rys. crossing, Caribou street, Moose Jaw, Sask., satisfactorily protected so long as speed limitation of 10 miles an hour is in effect.

53490. Sept. 26—Declaring C.P.R. crossing, first south of Ste. Agathe Station, Que., protected to Board's satisfaction.

53491. Sept. 26—Amending Order 53433, Sept. 8, 1936, by striking out paragraph 2 and substituting clause directing that 33⅓ per cent of cost of subway under C.N. Rys. at 18th street, New Toronto, Ont., not exceeding $60,000, be paid out of Rys. and Canals Vote No. 420; 25 per cent, not exceeding $45,000, be paid by C.N. Rys., and remainder by Town of New Toronto and Tp. Etobicoke; the C.N. Rys. to prepare plans and specifications and do work of construction of bridge supporting their tracks and other railway construction.

53492. Sept. 26—Amending Order 46114, Jan. 14, 1931, by striking out words "County of York" and substituting therefor words "Department of Public Works of Province of New Brunswick"—*re* bells and wigwags at C.P.R. crossing at Hervey, N.B.

53493. Sept. 24—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in tariffs and supplements filed by Dominion Atlantic Ry. under sec. 9.
53494.
53495.
53496.

53497. Sept. 24—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, toll published in tariff C.R.C. No. 747 filed by Temiscouata Ry. under sec. 9.

53498. Sept. 28—Amending Order 25436, Sept. 15, 1916, by striking out figures and letters "7 a.m. and 7 p.m." in 3rd line of operative part and substituting figures and letters "7 a.m. and 11 p.m."; also amending Order 52049, June 29, 1935, by striking out figures and letters "7 a.m. and 7 p.m." in 4th line of last paragraph and substituting "7 a.m. and 11 p.m."—providing for protection by watchmen at C.N. Rys. crossing of Laframboise street, St. Hyacinthe, Que.

53499. Sept. 28—Authorizing Quebec Dep't of Roads to construct diversion of Highway No. 16 along north side of C.N. Rys. in Mun. of St. Dominique and Town of Jonquiere, Que.

53500. Sept. 28—Directing C.N. Rys. to construct timber type subway at crossing in their yards at Sioux Lookout, Ont.

53501. Sept. 28—Authorizing Nova Scotia Dep't Highways to construct diversion of highway along C.N. Rys. between mileage 40·10 and 41·16, and closing two existing crossings.

53502. Sept. 28—Authorizing McLeod River Hard Coal Co., Ltd., to construct an entry under the C.N. Rys. in the S.W. ¼ sec. 25-48-22, W5M., Alta.

53503. Sept. 28—Authorizing Town of Dolbeau, Que., to construct crossing over C.N. Rys. opposite "The Boulevard" at Dolbeau, Que.

281

NOV 4 1936

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXVI | Ottawa, November 1, 1936 | No. 16

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Complaint of C. C. Moore & Co., Engineers, per Mr. Bernard Dunell, Vancouver, B.C., against the position taken by the Canadian Pacific Railway Company and upheld by the Canadian Freight Association, in classifying certain freight movement on power boilers shipped from Galt, Ontario, to Picture Butte, Alberta, as fifth class, the complainant claiming that same should have been sixth class.

File No. 33365.108

Heard before the Board at Vancouver, on Monday the 14th day of September, 1936.

ORAL JUDGMENT

DELIVERED BY MR. COMMISSIONER STONEMAN

Upon consideration of the submissions of the parties, which have been exchanged in written communications, also the oral representations to-day, which it is consequently unnecessary to review here; and the provisions of the classification items in question; also the principles embraced by rules 11 and 16 of the classification; and upon it being apparent from the documents submitted that this shipment was made from one station on one shipping order on one day by one shipper to one consignee and consisted of two complete boilers, K.D. not exceeding 35 feet in length, the ruling of the Board is that the shipment was properly rateable as boilers as per item 26, page 189 of Canadian Freight Classification No. 18, and not as boiler parts under item 24, page 2 of supplement 3 to the classification.

ORDER No. 53533

In the matter of the application of C. C. Moore & Co., Engineers, of Vancouver, British Columbia, for a ruling of the Board regarding the classification rating properly applicable under the Canadian Freight Classification on a shipment consisting of power boilers, K.D., from Galt, Ontario, to Picture Butte, Alberta.

File No. 33365.108

MONDAY, the 5th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Vancouver, September 14, 1936, in the presence of representatives of the said C. C. Moore & Co. Engineers, and the Canadian Freight Association, and what was alleged—

The Board declares: That the said shipment of power boilers from Galt, Ontario, to Picture Butte, Alberta, was properly rateable as boilers as per item 26, page 189, of Canadian Freight Classification No. 18, and not as boiler parts under item 24, page 2, of Supplement 3 to the said classification.

H. GUTHRIE,
Chief Commissioner.

Application of the Canadian National Railways, under Section 257 of the Railway Act, for an Order authorizing the substitution of wig-wags and bells for gates at King Street, Sherbrooke Street, Simcoe Street, Charlotte Street, and Hunter Street; and also for the substitution of wig-wags and bells for the flagman and present speed restriction of ten miles an hour at Brock Street—in the City of Peterborough, Ontario.

Files No. 9437.797; No. 6; No. 9437.967; and No. 26765.99

Heard at Peterborough, Ontario, July 24, 1936.

JUDGMENT

COMMISSIONER STONEMAN:

The Canadian National Railways made application to the Board to authorize the substitution of wig-wags and bells for gates at King street, Sherbrooke street, Simcoe street, Charlotte street, and Hunter street, in the city of Peterborough; and also for the substitution of wig-wags and bells for the flagman and present speed restriction of ten miles an hour at Brock street, in the city of Peterborough.

While the original application was for the substitution of wig-wags and bells for the existing protection, the application was modified at the hearing at Peterborough on the 24th of July, 1936, to substitute wig-wags for the existing protection at all the crossings on the streets above mentioned.

A traffic count, covering each of the streets involved in this application, for a twenty-four hour period on July 20 and 21, was filed by the applicants. The traffic count is comparatively light on all the streets dealt with in the application, the heaviest being at Charlotte street, where the traffic count for this twenty-four hour period, is as follows:—

Pedestrians (eastbound)	1,487
Pedestrians (westbound)	1,475
Motor traffic (eastbound)	3,760
Motor traffic (westbound)	3,179
Other vehicles (eastbound)	717
Other vehicles (westbound)	670

At the present time, the annual cost of maintaining and operating gates at tht above named crossings, and of the flagman at Brock street, is approximately $16,650. Of this amount the railway company pays approximately $15,000, and the city of Peterborough the balance. The apportionment of the cost, as between the railway company and the city, differs as to percentages at the various crossings.

The Canadian National Railways filed an estimate of the cost of installing wig-wags and of removing the present gates, amounting to approximately $10,100, the applicants agreeing to bear the whole cost of installation and maintenance, if the application were granted.

There is a speed restriction of ten miles an hour on all train movements in the whole area covered by the application. The applicants submit that, if the application is granted, it is proposed to keep two watchmen located in the tower on the east side of the railway, and on the north side of King street, who will cut out all unnecessary operation of the wig-wag signals at any of the six crossings named; that is where engines and cars being used in switching movements, come into sidings and operate the signals, these watchmen, having a view of all crossings, will cut out the operation of the wig-wag signals, while the train is standing.

There is also a siding near the station, where gates are maintained at a crossing of the highway on the east side of the main line of the railway. The applicants propose to continue the operation of these gates upon this siding as at present, the said gates to be operated manually from the tower.

During the discussion which took place at the hearing, it was suggested that in the immediate vicinity there were other unprotected crossings that might receive consideration, namely those at Wolfe street and Dalhousie street. The applicants were asked to file a traffic count for a twenty-four hour period, together with a record of the accidents, if any, at Wolfe and Dalhousie streets for the past five years.

Counsel for the railway company stated that if the present application were granted, the company would be prepared, at some time in the future, to install wig-wag protection at both Wolfe and Dalhousie streets.

The traffic count and record of accidents asked for has since been filed with the Board. The traffic count at Dalhousie street covers a twenty-four hour period on July 27, 1936, and is very light. There have been three (3) accidents at this crossing in the past five years; one of these occasioned slight damage to a truck, and no personal injuries have been inflicted in any of them.

The traffic count at Wolfe street, also covering a period of twenty-four hours on July 27, 1936, is light, and there have been no accidents at Wolfe street in the past five years.

Mr. Carley appearing for the city of Peterborough, filed a traffic count for July 18, 1936, at four of the streets mentioned in the application, namely, King street, Charlotte street, Simcoe street, and Hunter street. Brock street and Sherbrooke street are not included in this statement. July eighteenth was a Saturday, and the traffic count was taken from eight o'clock in the morning until twelve o'clock midnight.

This traffic count, as filed by the city of Peterborough, varies somewhat from that filed by the applicant, in that the traffic is shown to be somewhat heavier. However, the number of vehicles and pedestrians shown is comparatively light, when compared with other cases in which applications for the substitution of bell and wig-wag protection for gates have been granted.

The Municipal Council of the city of Peterborough objects to the application of the Canadian National Railways being granted, on the ground that, in its opinion, gates are more effective protection than wig-wags from a safety standpoint. The city authorities are of opinion that the wig-wags convey a warning, but they do not establish a prohibition; that the gates constitute both warning and prohibition. (See Evidence, Vol. 633, p. 1836.)

I have said that the traffic count, as filed with the Board for all the streets covered by this application, shows the traffic as comparatively light, when compared with that in previous cases, where application has been granted by the Board for the substitution of wig-wag protection in lieu of gates.

As an instance, the London and Port Stanley Railway Company, was, by order of the Board No. 49412, dated January 17, 1933, permitted to replace the watchman with bell and wig-wag protection at the crossing of Talbot street, in the city of St. Thomas, Ontario. (See Board's Judgments, Orders and Rulings, Vol. XXII, pp. 291 and 295.)

The traffic count at Talbot street crossing, taken on certain days in the months of February, March, April, May and July, 1932, between the hours of six a.m. and midnight, shows an average movement per hour over this crossing as follows:—

Trains	2·6
Vehicles	503
Pedestrians	646

The peak day on which the census was taken at this crossing showed the following:—

Trains	57
Vehicles	10,168
Pedestrians	17,694

I have had a number of checks made by the Board's Operating Department of crossings where applications similar to this have been granted, and have also asked the Operating Department for a report as to whether any accidents have taken place at the crossings referred to, since the bell and wig-wag protection has been installed. I am advised that no accidents have occurred at these crossings; further the Board's Engineering Department reports that there have been no accidents, of which it is aware, at any crossings where, by permission of the Board, bell and wig-wag protection has been substituted in lieu of gates.

In view of what the Board's records show, I am satisfied that the proposed protection in these cases would be quite as safe as the present protection.

The saving to the railway company, if the application is granted, will be approximately $15,000 per year, and to the city of Peterborough approximately $1,500 per year.

As stated in a previous judgment, safety should be given paramount consideration; when we are satisfied that the proposed protection is as effective as the present protection, I think that serious consideration should then be given to the saving that could be made if the application were granted.

The saving in this case is very substantial, and I am therefore of opinion that order should go allowing the Canadian National Railways to substitute wig-wags for the present protection at the six crossings named in the application, to take effect immediately; the Order to provide also for the installation of wig-wag protection at the crossing of Dalhousie street, within a period of two years.

Ottawa, October 1, 1936.

McLean, Assistant Chief Commissioner:

As to the disposition of these applications, I agree in the position taken by Commissioner Stoneman in his memorandum of October 1, 1936.

May I also refer to the position taken by me in the application of the Canadian National Railways for an order which will enable the applicant company to replace the gates by wig-wag and bell at highway crossing at West Lorne Park Station, Ont., file 9437.1094, 26 Board's Judgments and Orders, pp. 214 to 216, inclusive.

October 1, 1936.

JUDGMENT

Guthrie, Chief Commissioner:

The Canadian National Railways made application to the Board to authorize the substitution of wigwags and bells for gates at King street, Sherbrooke street, Simcoe street, Charlotte street and Hunter street, in the city of

Peterborough; and also for the substitution of wigwags and bells for the flagman and present speed restriction of ten miles an hour at Brock street, in the city of Peterborough.

These applications were heard by the Board in the city of Peterborough on July 24 last. Prior to the hearing of the applications, members of the Board had an opportunity of making a personal examination of the crossings in question. Upon the hearing counsel appeared for applicants and for the city of Peterborough.

At the present time and for a number of years past, all of the above-named streets, save Brock street, have been protected by gates. At Brock street the crossing has been protected by a flagman, and also by a speed restriction of ten miles an hour upon trains passing over this crossing. There is also a ten-mile per hour time-table order for the movement of all trains over all the other crossings. At present the tower for the operation of the gates at all crossings is located on the east side of the railway and on the north side of King street. If the change from gates to wigwags and bells is authorized, applicants propose to keep two watchmen at this tower to control the operation of the wigwags and to apply automatic cut-offs when trains are standing near the crossings during switching operations.

There is also a siding near the station where gates are maintained at the highway on the east side of the railway. The applicants propose to continue to operate the gates upon this siding track as at present. These gates will be operated manually from the tower.

Traffic counts pertaining to the various streets were placed before the Board by both the applicants and by representatives of the city of Peterborough. While there exists some variation in the figures submitted by the respective parties, the general result affords a good indication of the traffic which passes over the various streets at the intersections with the railway tracks. From these counts it is apparent that the heaviest traffic is upon Charlotte street, which forms part of Provincial Highway No. 28. In respect of the crossing upon Charlotte street, the city authorities emphatically stated that the present gates should be maintained. They also expressed the view that protection by gates was preferable to protection by wigwags at all crossings. They stated on behalf of the city that if any change were authorized from gates to wigwags, that the wigwags should be without bells as the ringing of bells in the central part of the city would prove an annoyance to the people.

Since the application was heard at Peterborough the city clerk has written to the Board under date of July 24, 1936, stating that the city of Peterborough would consent to the removal of the gates at King street, Sherbrooke street and Simcoe street, and the substitution of wigwags therefor. No mention is made in this letter of Charlotte street, Hunter street or Brock street, and it is assumed that the city desires to have the present protection afforded at these crossings continued in the future.

At the present time the annual cost of maintaining and operating gates at the above crossings is, approximately, $16,650. Of this amount the railway company pays $15,000 and the city of Peterborough about $1,500, according to the figures submitted by applicants, but, according to the figures submitted by the city, the cost to the city annually would be about $1,250 to $1,350. The apportionment of the cost as between the railway company and the city differs in respect of the various crossings. For instance, at Sherbrooke street the city pays 10 per cent and the railway company 90 per cent. At King street the city pays 15 per cent and the railway company 85 per cent, while at other crossings the railway company pays the full cost, but the total approximate cost in respect of all crossings is about $16,650 as above stated. The railway company has made an estimate of the cost of installing wigwags and of removing the present

gates. This estimate involves an expenditure of $10,100. Counsel for the railway company stated that the company would be prepared to bear the whole cost of installation and of maintenance, if the substitution from gates to bells and wigwags, or to wigwags alone, were authorized.

During the discussion which took place, Mr. Commissioner Stoneman suggested that in the immediate vicinity there were other unprotected crossings which might receive consideration. Wolfe street and Dalhousie street were mentioned in this respect. Counsel for the railway company thereupon stated that if the present applications were granted, the company would be prepared at some time in the future to install protection by wigwags at both Dalhousie and Wolfe streets. The cost of this additional installation would be approximately $3,500. I think the scheme would be more complete if protection at Dalhousie and Wolfe streets were included, but the work at these two streets might be postponed for a year or two.

Under conditions presently existing in respect of the above-mentioned streets, I am of opinion that the gates might be removed and wigwags without bells installed at King street, Sherbrooke street, Simcoe street and Hunter street. But that for the present at all events, the gates on Charlotte street should be maintained, as also the gates on the westerly side of King street leading to the freight-sheds. In my opinion, wigwags might also be installed at Brock street and the flagman dispensed with at that crossing. I would also include in any order to be made that wigwags should be installed at the crossings at Dalhousie and Wolfe streets within two years from this date. The cost of installation and all future maintenance at all of the above crossings, including Dalhousie and Wolfe streets, to be borne by the railway company.

September 28, 1936.

ORDER No. 53539

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for authority to substitute wig-wags for the flagman and present speed restriction of ten miles an hour at the crossing of Brock Street, in the City of Peterborough, Province of Ontario.

File No. 26765.99

Saturday, the 3rd day of October, A.D. 1936.

Hon. Hugh Guthrie, K.C., *Chief Commissioner.*
S. J. McLean, *Asst. Chief Commissioner.*
J. A. Stoneman, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Peterborough, July 24, 1936, in the presence of counsel for the applicants and the city of Peterborough, and what was alleged, the applicants consenting—

It is ordered: That leave be, and it is hereby, granted the applicants to install double wig-wag signals, in lieu of the flagman and present speed restriction of ten miles an hour, at the crossing of Brock street, in the city of Peterborough, province of Ontario, in accordance with the Standard Specifications for Highway Crossing Signals, approved under General Order No. 468, dated March 12, 1929, as amended by General Orders Nos. 521 and 553, dated respectively November 2, 1933, and March 26, 1936; a detail plan showing the layout thereof to be submitted for the approval of an Engineer of the Board; and the cost of installation and maintenance to be borne and paid by the applicants.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53540

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for authority to substitute wig-wags for the existing gates at the crossings of King street and Sherbrooke street, in the city of Peterborough, province of Ontario.

File No. 9437.797

SATURDAY, the 3rd day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Peterborough, July 24, 1936, in the presence of counsel for the applicants and the city of Peterborough, and what was alleged, the applicants consenting—

It is ordered: That leave be, and it is hereby, granted the applicants to install double wig-wag signals, in lieu of the existing gates, on the main line at the crossings of King street and Sherbrooke street, in the city of Peterborough, province of Ontario, in accordance with the Standard Specifications for Highway Crossing Signals approved under General Order No. 468, dated March 12, 1929, as amended by General Orders Nos. 521 and 553, dated respectively November 2, 1933, and March 26, 1936; a detail plan showing the layout thereof to be submitted for the approval of an Engineer of the Board; and the cost of installation and maintenance to be borne and paid by the applicants.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53541

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for authority to substitute wig-wags for the existing gates at the crossing of Charlotte street, in the city of Peterborough, province of Ontario.

File No. 6

SATURDAY, the 3rd day of October, A.D. 1936.

S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Peterborough, July 24, 1936, in the presence of counsel for the applicants and the city of Peterborough, and what was alleged, the applicants consenting,—

It is ordered: That leave be, and it is hereby, granted the applicants to install double wig-wag signals, in lieu of the existing gates, at the crossing of Charlotte street, in the city of Peterborough, province of Ontario, in accordance with the Standard Specifications for Highway Crossing Signals, approved under General Order No. 468, dated March 12, 1929, as amended by General Orders Nos. 521 and 553, dated respectively November 2, 1933, and March 26, 1936; a detail plan showing the layout thereof to be submitted for the approval of an Engineer of the Board; and the cost of installation and maintenance to be borne and paid by the applicants.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 53542

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for authority to substitute wig-wags for the existing gates at the crossing of Simcoe street, in the city of Peterborough, province of Ontario.

File No. 6

SATURDAY, the 3rd day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Peterborough, July 24, 1936, in the presence of counsel for the applicants and the city of Peterborough, and what was alleged, the applicants consenting,—

It is ordered: That leave be, and it is hereby, granted the applicants to install double wig-wag signals, in lieu of the existing gates, at the crossing of Simcoe street, in the city of Peterborough, province of Ontario, in accordance with the Standard Specifications for Highway Crossing Signals approved under General Order No. 468, dated March 12, 1929, as amended by General Orders Nos. 521 and 553, dated respectively November 2, 1933, and March 26, 1936; a detail plan showing the layout thereof to be submitted for the approval of an Engineer of the Board; and the cost of installation and maintenance to be borne and paid by the applicants.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53543

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for authority to substitute wig-wags for the existing gates at the crossing of Hunter street, in the city of Peterborough, province of Ontario.

File No. 9437.967

SATURDAY, the 3rd day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Peterborough, July 24, 1936, in the presence of counsel for the applicants and the city of Peterborough, and what was alleged, the applicants consenting,—

It is ordered: That leave be, and it is hereby, granted the applicants to install double wig-wag signals, in lieu of the existing gates, at the crossing of Hunter street, in the city of Peterborough, province of Ontario, in accordance with the Standard Specifications for Highway Crossing Signals approved under General Order No. 468, dated March 12, 1929, as amended by General Orders Nos. 521 and 553, dated respectively November 2, 1933, and March 26, 1936; a detail plan showing the layout thereof to be submitted for the approval of an Engineer of the Board; and the cost of installation and maintenance to be borne and paid by the applicants.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53544

In the matter of the crossing of Dalhousie Street by the Canadian National Railways in the City of Peterborough, Province of Ontario; and the consideration of the question of the protection to be provided thereat.

File No. 26711.590

SATURDAY, the 3rd day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the matter at the sittings of the Board held at Peterborough, July 24, 1936, in the presence of counsel for the applicants and the city of Peterborough, and what was alleged, the applicants consenting—

It is ordered: That, within two years from the date of this order, the Canadian National Railways install double wig-wags at the crossing of Dalhousie street, in the city of Peterborough, province of Ontario, in accordance with the Standard Specifications for Highway Crossing Signals, approved under General Order No. 468, dated March 12, 1929, as amended by General Orders Nos. 521 and 553, dated respectively November 2, 1933, and March 26, 1936; a detail plan showing the layout thereof to be submitted for the approval of an Engineer of the Board; and the cost of installation and maintenance to be borne and paid by the railway company.

H. GUTHRIE,
Chief Commissioner.

Application of the Department of Public Works of the Province of Alberta, for an Order of the Board covering proposed crossing over right-of-way of the Canadian National Railways in N.E. ¼, section 24-47-20, W.5M. (Foothills, Alberta); also the apportionment of the cost of constructing and maintaining same.

(File No. 39862)

JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

This was set down for hearing at Edmonton sittings on September 11, 1936. On representations, however, of the Department of Public Works, Alberta, that they desired to report their case by written submissions, and the railway agreeing to this method of disposition, the matter is dealt with on what is on file.

In the application filed the following language was used:—

> "I am enclosing herewith tracing and two prints showing proposed crossing over the right-of-way of the Canadian National Railways in the N.E. ¼ 24-47-20-W.5M. We are hereby making application to your Board for the necessary order for this crossing.
>
> "You will note that the plan is endorsed with the approval of officials of the railway company subject to the condition that the entire cost of construction and maintenance be borne by this department. As you may be aware, the territory traversed by this highway, as also by the railway company, is of a rough nature and the use of the original road allowances is impossible due to the physical conditions.
>
> "For this reason and in view of the fact that the company will not be asked to install a crossing on the road allowance north of Sec. 24, we feel that we are justified in asking that the order should provide that

the railway company bear the cost of construction and maintenance in lieu of the construction and maintenance of any crossing on the road allowance. The railway company's argument is that the original road allowance north of Sec. 24 is an unopened municipal highway and that the new provincial road running as it does, across country for several miles in a general southeasterly direction with no reference to the surveyed road allowances is an entirely separate undertaking to the development of the surveyed roads and cannot be considered a diversion of same at the crossing of the railway.

"It is quite true that the road allowances are not being followed for reasons stated above and could they be followed, there is no doubt that we would utilize them to a considerable extent. For instance, in this case, if physical conditions rendered it possible, we could probably route our highway along the road allowance north and east of Sec. 24, still running in a general southeasterly direction. Under the circumstances we are asking that your Board will take into consideration the points mentioned above and order accordingly."

The railway company sets out that its consent was conditional upon the cost of construction and maintenance being placed upon the province. It states that the reason for this is that the crossing is of a new provincial highway which is being developed in this district between Foothills and Sterco. The railway states that the scheme cannot be considered a development of the surveyed road allowances but is an entirely separate highway undertaking. At the point of crossing, therefore, the new highway cannot be considered as a diversion of the east and west road allowance north of section 24. The railway also relies on the action taken by the Board in connection with the crossing of the Trans-Canada highway at mileage 62·3, Minaki Subdivision. In this case the Board ruled that the cost of construction and maintenance should be borne by the province. This was dealt with under the Board's file 37517 and the direction as to cost was contained in Order 47688.

It would appear that the Minaki case is distinguishable in some respects from what is concerned in the present application. In the Minaki case the province of Manitoba was constructing the Trans-Canada highway through a country where there were no roads previously in existence, and it chose from the outset to construct an overhead crossing when probably a grade level crossing would have served for some time. In his answer to the Minaki application Mr. Fraser states that the Province was building the road to a high standard, and that it was an entirely different type of road from that which the unsettled nature of the country called for, as the surrounding territory was almost entirely rock and muskeg. (Letter dated March 13, 1931.) The railway states that it consented on the condition that the entire cost of construction and maintenance be borne by the applicant, and this condition is on the view that the highway is a separate and distinct construction and is in no way related to the road allowance system.

It is pointed out in Sasman v. Canadian Northern Railway Company (20 C.R.C. 246-248) that road allowances existing at the time the railway was constructed are senior, whether the road has been built or not. To quote the language of the judgment in question: "No matter how long the railway may have been constructed, in my mind there is no doubt but that the railway ought to be considered as junior, and, therefore, ought to put in and maintain the necessary highway crossing, in cases where such crossings are found to be necessary and compatible with public safety."

The attributes of seniority were involved in the application of the Deputy Minister of Northern Development for Ontario for reconsideration of Order No. 42485, dated April 2, 1929, in the matter of the application of the Department

of Northern Development, Ontario, for leave to construct a highway crossing over the Canadian National Railways, in Lot 20, Con. 1, Dawson Road Lots, District of Thunder Bay, Ontario. (Vol. 19, Board's Judgments and Orders, p. 273.) At p. 276 the following language was used:—

> "When the crossing on the road allowance is closed and a new crossing of the tracks is substituted therefor, I am of the opinion that the attributes of seniority which attached to the original crossing of the road allowance attach also to the substituted crossing; and, therefore, the cost of construction and maintenance of the substituted crossing should be borne by the railway company."

The crossing to be dealt with in the present application is a substituted one, and I am of the opinion, therefore, that order should go, the department having at the substituted crossing such rights of seniority as may attach to the existing road allowance as shown on the plan.

October 8, 1936.

The Deputy Chief Commissioner and Commissioner Stoneman concurred.

ORDER No. 53575

In the matter of the application of the Department of Public Works for the Province of Alberta, hereinafter called the "Applicant," under Section 256 of the Railway Act, for authority to construct a highway crossing over the Canadian National Railways in the Northeast Quarter of Section 24, Township 47, Range 20, West 5th Meridian, as shown on the plan and profile dated October 11, 1935, on file with the Board under file No. 39862:

SATURDAY, the 10th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Edmonton, Alberta, September 11, 1936, in the presence of Counsel for the Railway Company, no one appearing for the applicant, and what was alleged; and upon reading the written submissions filed,—
It is ordered:

1. That the applicant be, and it is hereby, authorized to construct a highway crossing over the Canadian National Railways in the northeast quarter of section 24, township 47, range 20, West 5th Meridian, as shown on the said plan and profile on file with the Board under file No. 39862, and in accordance with and subject to the Standard Regulations of the Board Affecting Highway Crossings.

2. That the road allowance between sections 24 and 25, township 47, range 20, West 5th Meridian be closed within the limits of the railway right of way and conveyed to the Canadian National Railways.

3. That the cost of constructing and maintaining the proposed crossing be borne and paid by the Canadian National Railways.

H. GUTHRIE,
Chief Commissioner.

Application of the Central Alberta Dairy Pool, Limited, and the Sunny Alberta Creameries, Limited, for a reduction in the Rates on Butter, in Carloads, from Alix and Red Deer, Alberta, to Vancouver, B.C.

File No. 34123.37

JUDGMENT

COMMISSIONER STONEMAN:

Written submissions were filed by the applicants, and by the railways in reply thereto, and the matter was then listed for hearing at a sittings of the Board in Calgary on 21st ultimo, in order that it might be more fully developed and additional representations received from the applicants and the railways. Rates named herein are in cents per 100 pounds, unless otherwise indicated.

On the Canadian Pacific Railway, Red Deer is on the line running between Edmonton and Calgary and is 99·2 miles south of Edmonton and 94·9 miles north of Calgary. On the Canadian National Railways, Alix is on the line between Calgary and Edmonton and is 107·6 miles south of Edmonton and 124·7 miles north of Calgary. Obviously, therefore, and as pointed out by applicants, butter shipped from Edmonton to Vancouver via the Canadian Pacific Railway passes through Red Deer and the distance from Edmonton is greater than from Red Deer; and butter shipped from Calgary to Vancouver via the Canadian National Railways passes through Alix and the distance from Calgary is greater than from Alix. The rate from Calgary and Edmonton to Vancouver is 137 cents; from Alix and Red Deer it is 156 cents. It is upon these grounds that application is made for a rate of 137 cents from Alix and Red Deer.

At the hearing, Mr. Adrain, representing the applicants, was asked if he were familiar with competitive rates and the reasons for their establishment and replied that he was not familiar with railway rates.

The rate difference in question is not of recent origin, the present rates having been in effect many years. In the Canadian Freight Classification, butter is classified third class in carloads, minimum weight 20,000 pounds. This rating has been specifically considered by the Board and held to be justified (Volume 15, Board's Judgments and Orders, page 199). The class rates between Vancouver and prairie points were also prescribed by the Board and are based on the mileage hauled, except, of course, that between competitive points where the mileage is unequal, the carrier with the longer mileage publishes the same rate as governed by the shorter mileage of the competing line and it is shown in the tariff as a competitive rate and may be lower than the rates between intermediate points which are not competitive. The Railway Act specifically authorizes the establishment of competitive rates which shall not be subject to the long and short haul clause under the provisions of the Act, that is to say, they may be lower for a longer than for a shorter distance over the same line in the same direction and within which such shorter distance is included, and the Board has always held and it is set out in numerous judgments that have been issued from time to time that such competitive rates, made under conditions which vary in almost every instance and are frequently very much below the normal basis, cannot properly be taken as a yardstick by which to measure the reasonableness of rates *per se*.

The mileages, third class rates and the commodity rates on butter between the points here in issue are shown below:—

To Vancouver, B.C. From	Miles via C.P.R.	Miles via C.N.R.	Third Class Rate	Carload Commodity Rate on Butter, Minimum Weight 20.000 Lbs.
Calgary, Alta.	641.5	993.7	145	137
Red Deer, Alta..	736.4	913.6	161	156
Alix, Alta...	781.5	869.0	171	156
Edmonton, Alta..	835.6	764.9	166 (C)	137 (C)

(C) Competitive rate; will not apply as maximum from or to intermediate points.

The origin of a commodity rate somewhat below the class rate goes back a great many years and before the Canadian National Railways reached the Pacific coast and the representative of the Canadian Pacific Railway advised that he was unable to state the reason, or basis, therefor. The rate from Calgary to Vancouver is based on the Canadian Pacific Railway mileage of 641·5 and not upon the longer mileage of the Canadian National Railways. Although the distance via the Canadian National Railways from Edmonton to Vancouver is greater than via the Canadian Pacific Railway from Calgary, the Canadian National Railways publish, from Edmonton, the same rate, namely, 137 cents, and the representative of the last named railway stated that this was because of the competitive conditions existing between these two centres and from a policy of long-standing on the part of that railway that they shall maintain Calgary and Edmonton on a parity of rates to and from Vancouver when there is competition between the shippers or the receivers at those two points. The provisions of section 329 of the Railway Act enable the Canadian Pacific Railway to publish a competitive rate from Edmonton to Vancouver to meet that of the Canadian National Railways without applying it to or from intermediate points; similarly, it permits the Canadian National Railways to publish, via its longer mileage from Calgary to Vancouver, competitive rates on the same basis as established by the Canadian Pacific Railway between the same points. A great number of competitive rates of this character exist throughout Canada, as well as the United States, and upon hundreds of commodities.

The action of the Canadian National Railways in meeting the Canadian Pacific rate from Calgary to Vancouver does not, in the slightest, injure the applicants in respect of the shippers at Calgary, as the latter would be able to ship their butter at a rate of 137 cents whether or not the Canadian National Railways published this rate. Similarly, in the case of Edmonton, if the Canadian Pacific Railway did not meet the rate published by the Canadian National Railways, it would not affect the applicants, because the shippers have that rate available to them via the Canadian National Railways. The competitive rate from Edmonton via the Canadian Pacific Railway and from Calgary via the Canadian National Railways enables those railways to participate, to some extent, in a movement which would take place at the current rates in any event. In the absence of the publication of these competitive rates, the grounds, upon which the applicants here appear before the Board, would disappear, but their rate situation would be no different from what it is to-day. However, the publication of the competitive rates in question does not, for the reasons herein outlined, provide any justification for a direction by the Board, or a demand by the applicants, that the same rates be protected from Alix and Red Deer.

The questions here requiring consideration and determination by the Board are whether there is any unjust discrimination between the rates from Calgary and Edmonton as compared with Alix and Red Deer, or whether the rates from the last named points are, in themselves, unreasonable in comparison with the rates from Calgary and Edmonton. The applicants do not allege that the present rates are unreasonable *per se* and presented no evidence on this point.

As to what constitutes a rate discrimination which is unjust, the Board has repeatedly stated that the matter of detriment, if any, to which the applicant is subjected by the alleged unjust discrimination, or undue preference, must be considered; that a difference in rates is discrimination, but the prohibitions of the Railway Act in regard to discrimination are prohibitions of *unjust discrimination,* or *undue preference,* and the question is whether the discrimination amounts to an unjust discrimination or an undue preference. One criterion of unjust discrimination is whether the district alleged to be discriminated in favour of has profited at the expense of the locality against which it is alleged the discrimination has taken place. Evidence is required as to how rates complained of react to the detriment of the applicant and, where no evidence is

submitted that an alleged rate advantage possessed by a competitor had rendered it more difficult for the applicant to do business, the allegations of unjust discrimination have been held to be unfounded. Questions were directed to Mr. Adrain for the purpose of enabling him to develop any unjust rate discrimination which might be alleged, but his answers provided no evidence whatever upon which a finding of the existence of unjust discrimination can be made.

There is a difference of 19 cents between the compared rates and Mr. Adrain stated that this creates a hardship upon the producer, as they are a producers' organization and the producer has to pay the difference. The rate difference is due to the longer haul from Alix and Red Deer as compared with the shorter rate-controlling mileage from Calgary and Edmonton. With respect to rates, generally, whether on butter, grain, lumber or other commodities, it naturally follows that where rates are based on mileage, the producers pay rate differences dependent upon their distance from the market to which their product is shipped. As compared with rate of 156 cents from Alix and Red Deer, it is shown that butter is also being shipped in substantial volume to Vancouver from other points, such as Viking, at rate of 162 cents, and Hanna and Lloydminster at rate of 183 cents, as well as from points in Saskatchewan and Manitoba at rates ranging from 192 to 221 cents.

Mr. Adrain stated he had no information concerning the volume of butter moving to Vancouver from creameries at Edmonton and Calgary and was unable to show that the rate difference resulted in the Calgary and Edmonton shippers reaching into their territory. The rate difference amounts to only nineteen one-hundredths of a cent per pound, so that it seems obvious that the Edmonton and Calgary shippers could not, as a result of the freight rate difference, encroach upon the territory from which butter is drawn for assembling at Red Deer and Alix and reshipment to Vancouver. From a point 45 miles distant from Edmonton or Calgary, the less-than-carload rate on butter into these points is 30 cents, with an allowance of one-third of the inward freight charges to the storage point upon reshipment in carloads from the storage point. Calgary and Edmonton would be logical assembling places from points within this distance therefrom, while from many points beyond this radius, as well as all points within this radius from Red Deer and Alix, the last named points would appear to have rate advantages based upon combination of the inward and outward rate.

With regard to the reasonableness of the present rate from Alix and Red Deer, there is shown below a tabulation of the ton-mile revenue to Vancouver from the points here in question:—

From	Miles C.P.R.	Miles C.N.R.	Rate per 100 lbs.	Revenue per Ton per Mile
Calgary..	641.5	993.7	137	C.P.R. 4.26 cents
				C.N.R. 2.75 "
Edmonton	835.6	764.9	137	C.N.R. 3.58 "
				C.P.R. 3.27 "
Alix..	781.5	869.0	156	C.P.R. 3.99 "
				C.N.R. 3.59 "
Red Deer	736.4	913.6	156	C.P.R. 4.23 "
				C.N.R. 3.41 "

The pivotal rate, as shown from what is already set out herein, is that from Calgary. This is based on the Canadian Pacific Railway mileage of 641·5 and yields a ton-mile revenue of 4·26 cents. This rate was before the Board for consideration upon an application from the Central Creameries, Limited, Calgary, Alberta, and found by the Board not shown to be unreasonable *per se* (Volume 17, Board's Judgments, Orders and Rulings, page 390). The ton-mile revenue from Alix and Red Deer is lower than from Calgary via the Canadian Pacific Railway. The ton-mile revenue from Edmonton and from Calgary via the Canadian National Railways cannot be taken as a yardstick by which to measure the reasonableness of the rate, owing to the competitive character

thereof. It may be observed, however, that, under the competitive rate established from Edmonton by the Canadian National Railways, the ton-mile revenue is the same as from Alix via the same railway. Upon this record it is not shown that the rate from Alix and Red Deer is unreasonable in comparison with the rate from Calgary and Edmonton.

Mr. Innis, representing Burns and Company, appeared at the Calgary sittings. He stated that they have creameries at Camrose, Hay Lake, Leduc, Millet, New Norway, Ponoka, Stettler and Wetaskiwin. He made no application for any reduction in the present rates therefrom to Vancouver, but merely requested that, should there be any readjustment of the rates from Alix and Red Deer, the same rates be made applicable from the other points named.

Upon careful consideration of the record in this case, I consider that this application should be dismissed.

Ottawa, Ontario, October 15, 1936.

The Assistant Chief Commissioner and the Deputy Chief Commissioner concurred.

ORDER No. 53584

In the matter of the application of the Central Alberta Dairy Pool, Limited, and the Sunny Alberta Creameries, Limited, for a reduction in the rates on butter, in carloads, from Alix and Red Deer, Alberta, to Vancouver, British Columbia:

File No. 34123.37

WEDNESDAY, the 14th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Calgary, September 21, 1936, in the presence of representatives of and Counsel for the said Central Alberta Dairy Pool, Limited, the Sunny Alberta Creameries, Limited, the Canadian Pacific Railway Company, and the Canadian National Railways, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

Application of the Canadian Car Demurrage Bureau, Winnipeg, for Ruling of the Board with respect to the proper interpretation of the Car Demurrage Rules applying on Bulk Grain consigned to the Midland Pacific Terminal, Limited, at North Vancouver, B.C.

File No. 1700.397

JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

The Canadian Car Demurrage Bureau, Winnipeg, by letter to the Board dated June 10, 1936, referred to the provisions of Canadian Freight Association Tariff C.R.C. No. 253, publishing car demurrage rules and charges applying on

bulk grain for export handled through the elevators specifically named therein at Vancouver, North Vancouver, Westminster, New Westminster, Victoria and Prince Rupert, and to a difference of opinion between the Demurrage Bureau and the Midland Pacific Terminal, Limited, at North Vancouver, with respect to the proper interpretation of the provisions of said tariff.

The Demurrage Bureau set out that the elevator of the Midland Pacific Terminal, Limited (which is named in the tariff), is at North Vancouver and the capacity of the siding serving it is 26 cars; that cars of grain consigned to it are billed on Vancouver; that the road-haul carrier notifies the Midland Pacific Terminal, Limited, of the arrival of cars and delivers all cars to the Vancouver Harbour Commissioners Terminal Railway, which delivers them at North Vancouver and places them on the elevator siding. It is stated that, when the movement of grain is at its peak, the Vancouver Harbour Commissioners Terminal Railway is occasionally unable to accept and store in its terminal all the cars tendered for delivery at North Vancouver; that, when this condition arises, the road-haul carriers hold the surplus cars in their terminals until the terminal railway is in a position to accept them. The point in issue between the parties is outlined by the following excerpt from the Demurrage Bureau's letter:—

> "When there are cars on hand in excess of the Midland Pacific Terminal Limited's ability to accommodate on the siding serving their elevator, the road haul carriers, in compliance with Rule No. 7 of the Demurrage Rules, give constructive placement notices for the cars awaiting placement, held in their own terminals or in the terminal of the Vancouver Harbour Commissioners Terminal Railway.
>
> "The Midland Pacific Terminal, Limited, have protested to this Bureau that the carriers have exceeded their legal rights in serving constructive placement notices before the cars have actually arrived at North Vancouver. We have informed them that when their siding is filled to capacity, the carrier concerned is at liberty to hold the surplus cars on any track that best serves its purpose until such time as there is room on consignee's siding. We have also informed them that the free time on cars so held would commence to run from the first 7 A.M. following notification of constructive placement, it being always understood that cars under constructive placement must be actually placed as soon as there is room therefor on their siding.
>
> "The Midland Pacific Terminal, Limited, have advised the carriers concerned that they are not prepared to accept our interpretation. We respectfully request the Board to advise if our interpretation of the Rule in respect to giving constructive placement notice to the Midland Pacific Terminal, Limited, is correct."

A copy of the Demurrage Bureau's letter was forwarded by the Board to the Midland Pacific Terminal, Limited, for the purpose of receiving any submissions they might have to make in the matter prior to rendering a ruling thereon, and they requested that it be brought before the Board when next in Vancouver and it was accordingly set down for hearing at sittings of the Board in Vancouver on 14th ultimo.

The tariff provides five days' free time to unload grain from cars to elevator and stipulates that:—

> "Free time, under this rule, will be computed from the first 7 A.M. after notice of arrival of car, or notice of carrier's readiness to deliver car at the port, has been sent or given. See Rule 2, Canadian Car Demurrage Rules, W. J. Collins, Agent, C.R.C. No. 4."

The relevant portion of Demurrage Rule No. 2, as referred to in the tariff, reads:—

> "(*b*) Delivery of cars upon private sidings or industrial interchange tracks shall constitute notification thereof to the consignee. If such

delivery cannot be made owing to such tracks being fully occupied, or from any other cause beyond the control of the carrier, written notice of readiness so to deliver shall be given and shall constitute notification to the consignee for the purposes of these rules, in which case the free time shall be computed from 7 o'clock a.m. of the first following day."

Demurrage Rule No. 7 was also referred to, which is more in the nature of an interpretation, and is, of course, related to Demurrage Rule No. 2 (*b*). The relevant portion of Demurrage Rule No. 7 reads:—

> "Delivery of cars to private sidings or industrial interchange tracks shall be considered to have been made when such cars have been placed thereon, or when they would have been so placed but for some condition for which the consignee is responsible. When cars cannot be so placed, the carrier shall notify the consignee in writing of its inability to deliver the cars because of the condition of the private siding or interchange tracks, or because of other conditions attributable to the consignee. This shall be considered 'Constructive Placement.'"
>
> "Should the delivery require interswitching, the switching carrier shall notify the line carrier when for the aforesaid reason cars cannot be placed."

The position taken by the Midland Pacific Terminal is that Vancouver and North Vancouver are separate and distinct points of destination; that cars of grain consigned to them have not reached their ultimate destination until they get to North Vancouver and, consequently, they dispute the right of the railways to assess and collect demurrage before the cars have reached North Vancouver.

The contention of the railways, with respect to the position taken by the Midland Pacific Terminal, is that demurrage is a penalty in the sense that it is for the protection of the general shipping public in forcing the release of cars under load, also compensation to the railway for the use of its property; that, when cars have to be held out on storage tracks because the consignee cannot handle them, it is immaterial where cars stand. It is further pointed out that Demurrage Rule No. 7 stipulates that:—

> "Should the delivery require interswitching, the switching carrier shall notify the line carrier when, for the aforesaid reason, the cars cannot be placed,"

consequently, this is stated as clearly contemplating that there may be an intervening carrier between the road haul carrier and the industry and that the rule appears to have been framed in contemplation of the situation here in question.

In the case of the Canadian Pacific Railway, it is stated that their trains coming to Vancouver are broken up at Coquitlam, which is the breaking-up yard for Vancouver and points reached from Vancouver; that the yards in Vancouver are merely distributing yards and are not storage yards, the cars being moved from Coquitlam into the distributing yards at Vancouver as required by the consignees and distributed therefrom. Similar situations prevail elsewhere throughout Canada at the larger terminal points; for example, Mimico is the storage yard for Toronto in connection with freight from the West on the Canadian National Railways. Giving effect to the position taken by the Midland Pacific Terminal, cars consigned to Vancouver via the Canadian Pacific Railway, and to Toronto from the West via the Canadian National Railways, would not be at their ultimate destination when at Coquitlam or Mimico and, if held at these points awaiting consignees' ability to take delivery, no demurrage would be assessable.

At Vancouver, under such an interpretation, there would be an anomalous situation. In the case of the Canadian National Railways, their break-up and storage yards are at Vancouver. A car held by the Canadian National Railways on storage tracks there awaiting ability of consignee to take delivery would be properly subject to demurrage charges, because the car is at its ultimate destination, while a car held by the Canadian Pacific Railway on storage tracks at Coquitlam, for the same Vancouver consignee and under the same circumstances, would not be subject to demurrage because it is not at its ultimate destination. Again, in the case of the Canadian National Railways, there could be an accumulation of cars at Vancouver awaiting delivery to elevators at Vancouver, also to the elevator at North Vancouver; those awaiting delivery to the elevators at Vancouver would be subject to demurrage while those held under similar circumstances awaiting delivery to the elevator at North Vancouver would not be subject to demurrage because they are not at their ultimate destination and could not be placed there because there is no trackage capable of accommodating them at that point, consequently, they must, of necessity, be held at Vancouver or elsewhere.

Demurrage Rule No. 2 does not state that the cars must be at their ultimate destination before its provisions are applicable. It merely states that when delivery of cars upon private sidings "cannot be made owing to such tracks being fully occupied, or from any other cause beyond the control of the carrier, written notice of readiness so to deliver shall be given and shall constitute notification to the consignee for the purposes of these rules." In no case has the Board ruled that the cars must necessarily be at the ultimate destination, in the strict sense here contended by the Midland Pacific Terminal, before the provisions of the rule are applicable and any such ruling would result in an anomalous and discriminatory application of the Demurrage Rules in the light of situations of the character already briefly described herein. It is observed that the United States Car Demurrage Rules are more specific on this point than the Canadian rules. Demurrage Rule No. 5 in Agent B. T. Jones' tariff C.R.C. No. 1425 provides:—

> "Under this rule the time of movement between hold point and destination, and any other time for which the railroad is responsible will not be computed against the consignee.
>
> "When delivery of a car consigned or ordered to an industrial interchange track or to-other-than-a-public-delivery track cannot be made on account of the inability of the consignee to receive it, or because of any other condition attributable to the consignee, such car will be held at destination, or, if it cannot reasonably be accommodated there, at the nearest available hold point, and written notice that the car is held and that this railroad is unable to deliver will be sent or given to the consignee. This will be considered constructive placement."

On the point submitted by the Demurrage Bureau, the ruling of the Board should, I consider, be that, when delivery of cars upon private sidings cannot be made owing to such tracks being fully occupied, or from any other cause beyond the control of the carrier, the carrier concerned is at liberty to hold the surplus cars on any storage track that best serves its purpose until there is room on the consignee's siding; that the free time on cars so held shall be computed from the first 7 a.m. following notification of constructive placement; that time of movement between hold point and the private siding and any other time for which the railway is responsible will not be computed against the consignee.

While not covered by the Demurrage Bureau's submission, reference was made at the hearing in Vancouver to the conditions under which semi-public elevators operate under the provisions of the Canada Grain Act and which appear to call for consideration by the Board.

The situation and practice with respect to demurrage rules and charges on bulk grain for export, handled through British Columbia coast elevators prior to September 15, 1927, is obscure and whether there was any demurrage collected is not a matter of record with the Board.

Effective September 15, 1927, Agent Thompson's Tariff C.R.C. No. 71 published a new item which, as to free time and the charges thereafter, was the same as that in the current tariff, but applied to all elevators. It was stated in a letter from Mr. Thompson, dated September 8, 1927, that, at Vancouver, all the elevators with the exception of one were then being operated as private elevators, the other being a public elevator, and that "the carriers felt that to avoid the possibility of being accused of discrimination, it would be necessary to assess demurrage against all elevators."

The Pacific Terminal Elevator Company, Limited, operating as a public terminal elevator, filed a protest concerning the application of the tariff against their elevator, alleging that it was discriminatory because public terminal elevators in other parts of Canada were not included. Protests of similar character were also filed by the Grain Exchange Division of the Vancouver Merchants Exchange, the Vancouver Board of Trade, the Calgary Grain Exchange, the Calgary Board of Trade, the Edmonton District Chamber of Commerce and the Traffic Supervisor of the Province of Alberta. There were no protests filed by the private elevator companies, constituting, it was stated, over 75 per cent of the elevator capacity at Vancouver.

By Order No. 39556, dated September 15, 1927, the Board suspended that portion of the tariff covering demurrage rules and charges on bulk grain consigned to public terminal elevators at Vancouver, pending a hearing by the Board. The matter was then set down for hearing at sittings of the Board in Vancouver on October 19, 1927. While not listed, it was also spoken to at sittings of the Board in Edmonton on October 12, Mr. Chard, Traffic Supervisor for the Province of Alberta, desiring to have the Board hear representations there from a couple of witnesses. At the Vancouver sittings on October 19, 1927, the interested parties advised the Board that, as a result of conferences, they had reached an agreement in this matter, namely, that the tariff be amended naming therein the elevators subject to its provisions and which would not include public elevators, the Pacific Terminal Elevator Company being then the only public elevator at Vancouver. The elevators named as being subject to the tariff and which had made no protest to the Board with respect thereto were then referred to as private elevators. On the record, therefore, this had the effect of placing the public elevator in the same position as the public terminal elevators at the head of the lakes. Further, inasmuch as public elevators must receive grain offered for storage therein and have no effective control of the grain shipped to them, while private elevators handle only their own grain and are, consequently, in a position to control the movement of grain thereto, it was apparently considered by all the interested parties that there was a clear distinction and no unjust discrimination as between the public and private elevators with respect to the demurrage rules and charges. Order No. 39913, dated November 17, 1927, rescinded Order No. 39556 and made reference therein to the agreement reached by the interested parties and the tariff giving effect thereto was issued effective December 9, 1927. There the matter rested until the question was here raised.

Reference was made by the representative of the Midland Pacific Terminal, Limited, to the position they are placed in by the operation of the Canada Grain Act, as passed by Parliament in 1930. Under its provisions, the shipper has a right to ship his grain to a public, or semi-public, elevator without the knowledge of the manager or operator of such elevator. By section 133 of the said Act, public and semi-public elevators operate under substantially the same conditions so far as concerns the receipt of grain for storage. The Midland Pacific

Terminal, Limited, is licensed as a semi-public elevator and, although not specifically stated, it may be inferred that other elevators named in the tariff are similarly licensed.

Upon this brief statement of the situation, as summarized from the record here before us, there would seem to be a change in the conditions as existing in 1927 when the tariff was first published and that, under the existing conditions, there is a difference in treatment as between the public and semi-public elevators, with respect to demurrage rules and charges, which creates an unjust discrimination and the onus is upon the railways to either justify the present situation and show conclusively that no undue preference or unjust discrimination exists, or, failing this, to either cancel the present tariff provisions or review the whole situation and submit whatever demurrage rules and charges they deem appropriate and proper to be applicable alike to all elevators (semi-public, public or terminal) throughout Canada, which are operating under substantially similar circumstances and conditions. A reasonable length of time, say sixty days, may be permitted the railways for this purpose.

Having expressed conclusions herein upon the points raised, there appears no necessity for the issuance of any order in the matter at this time.

Ottawa, Ontario, October 15, 1936.

The Deputy Chief Commissioner and Commissioner Stoneman concurred.

Application of the city of Saskatoon, Saskatchewan, for an Order of the Board approving the straightening out of the crossing at the intersection of 33rd street and 3rd avenue and for the entrance from Memorial avenue into 33rd street across the tracks of the Canadian National Railways, Saskatoon, Saskatchewan.

File No. 35734

JUDGMENT

Garceau, *Deputy Chief Commissioner:—*

The application of the City of Saskatoon, as presented at the hearing, is two-fold. It requests:

(*a*) that the projection or jog in 3rd avenue south of 33rd street be eliminated by straightening out 3rd avenue and for that purpose using part of the right of way belonging to the Canadian National Railways;

(*b*) that the " de facto " crossing at the entrance of Memorial avenue from 33rd street be declared a public crossing.

The first part of the application, contained in paragraph (*a*), cannot be considered by the Board. It is for the betterment of a highway (3rd avenue) which would not interfere with railway operations or with the use of any highway crossing.

In 1927, the railway company obtained the consent of the city of Saskatoon and the Board's approval for the construction of a spur across 33rd street; as a matter of fact the tracks were laid across not only 33rd street but also Memorial avenue at its junction with that street.

In 1905 the city purchased a cemetery which is marked Parcel " A " on the plan filed as Exhibit No. 2. As part of the transfer of Parcel " A," the right of way known since as Memorial avenue, marked on the same plan as Parcel " H," was given to the buyer, the town of Saskatoon.

The title to this right of way from Parcel "A" to 33rd street shown on the map as "government allowance road" was issued in favour of the town by the Registrar of Land Titles for the East Saskatchewan Land Registration District at Prince Albert, the 4th of December, 1905 (Exhibit No. 6), although the railway company was owner since 1898 of that part of Parcel "H" (Memorial avenue) over which since 1927 there exists the crossing mentioned in the application, indicated as a shaded triangle on the plan filed as Exhibit No. 1.

The railway which in 1927 graded, built and planked the crossing on the existing Memorial avenue, at its own cost, does not object to the application but wants (*a*) to be acknowledged as owner of the land in accordance with its title; (*b*) the city to assume all costs in connection with the extension of Memorial avenue to connect with 3rd avenue, including grading and the removal and relocating of all telegraph poles, wires, buildings, etc.

These are the only conditions asked (see Evidence, pp. 2005 and 2006).

As far as protective devices are concerned, as there are none required at present, this matter is to be left in abeyance until the need for them arises.

As the city admits the ownership of the railway, and in view of the fact that the extension on Memorial avenue has been completed, there remains no objection from the railway against the city's application.

The only question to be considered is who shall keep and maintain this "de facto" crossing when it has been declared a public highway crossing by the Board.

Memorial avenue has been used by the public since 1905 as a highway (street) up to 33rd street, without any hindrance or protest from the railway.

It was and is still the only roadway to the cemetery and was called "Memorial avenue" after the Great War to commemorate the deeds of the citizens of Saskatoon who lost their lives in that conflict.

In 1927 when the railway built its spur track to the Robin Hood mills, it requested the Board's permission to cross 33rd street but not Memorial avenue, although its tracks were laid on Memorial avenue diagonally at its junction with 33rd street.

At the hearing, as above mentioned, the railway company formally consented to let the public use its land as part of Memorial avenue.

Have the above mentioned facts given the public certain vested rights?

It must be noted that the public, from 1905 to 1927, was allowed the use by the railway of a part of its right of way outside of its tracks.

This usage by the public did not interfere with the operations of trains.

The question as to whether a railway can dedicate a right of way over its property without the authority of the Board or, formerly, of the Railway Committee of the Privy Council, has been decided in the affirmative when the evidence left no doubt as to the intention of dedication and the acceptance by the public by long and constant use, as in this case.

The judgment rendered by the Assistant Chief Commissioner in file No. 26744.4, reported in Volume II, Board's Judgments, Orders, Regulations and Rulings, page 155, is "ad rem." The following quotation (page 157) applies:—

> "The matter was further developed in the Royce avenue Case, Board's file 9437.148, in which decision was given by the late Chief Commissioner Mabee on May 23, 1910. What was before the Board was an application of the city of Toronto for an order directing the Canadian Pacific and Grand Trunk to construct and provide a public crossing at Royce avenue, and to provide protection therefor by gates and watchmen or by such other protection as the Board might deem proper. The city's contention in this case was that a public crossing had been created

by the railways and that there had been a public user. The railway companies' submission was that the crossing was for the purpose of giving the owners affected means of access from their property to Dundas street, and that there never had been any order of the Railway Committee of the Privy Council authorizing the crossing.

"The Chief Commissioner, in his judgment delivered at the close of the hearing, and reported in vol. 107 of the Board's Notes of Evidence, p. 6791, distinguishes the Denison avenue Case (Weston case) pointing out that in that case the railway companies did everything they could to prevent any inference of intention to dedicate a portion of their lands to public use as a highway crossing, whereas in the Royce avenue Case the companies 'did everything they could to convey this property to the public for a highway crossing.' He points out that for many years it had been maintained as a highway by the municipality; that it had been used by the public; and that the railway companies could not do any more than they did to make it a highway; and adds that 'whatever it might be, if it were being dealt with upon strictly legal lines in a court of law, where the trial judge would be tied up by a long line of cases, decided in many instances centuries ago, we do not think that that is the spirit of the railway legislation.' A highway, in the interpretation clause of the Act, includes 'any public road, street, lane, or other public way or communication.' In this case there is clearly a public way, and has been for twenty-seven years or more public communication over these lands. We think that it is a highway within the meaning of the Railway Act, and we think also that it is a point that needs protection."

In the present case the highway has been in use over thirty years. The railway built the crossing in 1927 and has maintained it since then without any reservation.

I am of the opinion that the highway has seniority rights, according to the above quoted rulings.

I would grant the application and apportion the cost of maintenance of the highway crossing at Memorial avenue against the railway, without prejudice to other rights of the railway as property owner.

October 16, 1936.

The Assistant Chief Commissioner and Commissioner Stoneman concurred.

ORDER No. 53599

In the matter of the application of the City of Saskatoon, in the Province of Saskatchewan, hereinafter called the "Applicant," for an Order requiring the improvement of the existing crossing of the Canadian National Railways on Third Avenue and Memorial Avenue, adjacent to Thirty-third Street, in the said City.

File No. 35734

MONDAY, the 19th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Saskatoon, September 10, 1936, in the presence of counsel for the applicant and the railway company, and what was alleged,—

It is ordered:

1. That the application for the straightening out of a projection, or jog, in Third avenue, at the south of Thirty-third street, in the city of Saskatoon, province of Saskatchewan, be, and it is hereby, refused.

2. That the crossing by the Canadian National Railways of Memorial avenue, at Thirty-third street, in the said city, as shown on the plan and profile dated August 10, 1936, on file with the Board under file No. 35734, be, and it is hereby, approved; the said crossing to be maintained by and at the expense of the railway company, and in accordance with the Standard Regulations of the Board Affecting Highway Crossings.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53523

In the matter of the application of the Crow's Nest Southern (Great Northern) Railway Company, hereinafter called the "Applicant Company," for leave to discontinue operation of its line of railway between Fernie and Newgate, British Columbia; and Order No. 53515, dated October 2, 1936, authorizing the Applicant Company to discontinue operation of the said line of railway.

File No. 39874

MONDAY, the 5th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Whereas it is necessary to issue tariff schedules in order to provide for cancellation of rates and fares on the said line—

It is ordered: That the Crow's Nest Southern Railway Company (Great Northern Railway Company) be, and it is hereby, permitted to file tariff schedules, effective on ten days' notice, providing for cancellation of tariffs containing rates, fares, charges, and regulations applying between points on the said railway.

2. That orders numbered 53059 and 53068, dated respectively May 1, 1936, and May 8, 1936, be, and they are hereby, rescinded.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53531

In the matter of the application of the Niagara, St. Catharines & Toronto Railway Company, hereinafter called the "Applicant Company," under Section 334 of the Railway Act, for approval of its Standard Passenger Tariff C.R.C. No. 325, on file with the Board under file No. 34322.

TUESDAY, the 6th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

Upon its appearing that the present Standard Passenger Tariff of the Applicant company C.R.C. No. 295 expires on November 30, 1936, and that the applicant company desires to extend the fares for a further period of one year—

It is ordered: That the applicant company's said Standard Passenger Tariff C.R.C. No. 325, effective December 1, 1936, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette.*

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53546

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 6th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 10 to Tariff C.R.C. No. 875, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 10 to Tariff C.R.C. No. 875, approved herein, are as follows:—

From	Cents per barrel
Ellershouse, N.S. Newport, N.S.	23
Windsor, N.S. Hantsport, N.S,	23
Avonport, N.S. Port Williams, N.S.	23½
Kentville, N.S.	24½
Coldbrook, N.S. Berwick, N.S.	26½
Aylesford, N.S. Kingston, N.S.	27½
Wilmot, N.S. Annapolis Royal, N.S.	29½
Clementsport, N.S. Digby, N.S.	32
North Range, N.S. Yarmouth, N.S.	36
Brooklyn, N.S. Mosherville, N.S.	23½
Clarksville, N.S. Kennetcook, N.S.	24½
South Maitland, N.S. Lower Truro, N.S.	27½
Mill Village, N.S. Kingsport, N.S.	26½
Billtown, N.S. Grafton, N.S.	27
Somerset, N.S. Weston, N.S.	27½

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53547

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 6th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in items 101-A and 111 of Supplement No. 12 to Tariff C.R.C. No. 907, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 12 to Tariff C.R.C. No. 907, approved herein, are as follows:—

Item No.	Cents per 100 pounds
101-A	6½
111	3

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53548

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 6th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Group "A" of Tariff C.R.C. No. 1013, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act (except the proportional rates between Truro, N.S., and stations indexed 55 to 120, inclusive), be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 1013, approved herein, are those published in Dominion Atlantic Railway Tariffs C.R.C. Nos. 688, 689, 690, 691, and 774, except that between Truro (Local) and points named the rate basis shown below and published in Dominion Atlantic Railway Tariff C.R.C. No. 1013 will apply as normal tolls, namely:—

Halifax, N.S.	47-A
Rockingham, N.S.	43-B
Bedford, N.S.	43-B
Windsor Jct., N.S.	40-C

Also between Dimock's and Halifax Rate Basis 43-B, published in the said Tariff C.R.C. No. 1013, will apply as normal tolls.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53549

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 6th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 1015, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 1015, approved herein, are as follows, namely:—

	Cents per 100 pounds	
	Lake and rail	All rail
Sault Ste. Marie, Ont.	..	54½
Fort William, Ont. Port Arthur, Ont. West Fort William, Ont.	39	54

One and one-half cents per 100 pounds to be deducted on account of water movement.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53550

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 6th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 1017, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportions to be reported as shown below.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportions of the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 1017, approved herein, are as follows:—

From	Cents per barrel Tariff	Normal
Ellershouse-Newport, N.S.	14½	18
Windsor-Hantsport, N.S.	14½	18
Avonport-Port Williams, N.S.	15	19
Kentville, N.S.	15½	19½
Coldbrook-Berwick, N.S.	17½	22
Aylesford-Kingston, N.S.	18	22½
Wilmot-Annapolis, N.S.	19½	24½
Clementsport-Digby, N.S.	21½	27
North Range-Yarmouth, N.S.	25	31½
Brooklyn-Mosherville, N.S.	15	19
Clarksville-Kennetcook, N.S.	15½	19½
South Maitland-Lower Truro, N.S.	18	22½
Mill Village-Kingsport, N.S.	17½	22
Billtown-Grafton, N.S.	17½	22
Somerset-Weston, N.S.	18	22½

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53551

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 6th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 4 of Tariff C.R.C. No. 1018, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to be reported at 59·5 cents per drum.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 1018, approved herein, is 74·5 cents per drum.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53552

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 6th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 1019, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 1019, approved herein, are as follows:—

From	Cents per barrel or equivalent A	B	C
Annapolis Royal, N.S.	50	50	50
Bridgetown, N.S.	50	50	50
Middleton, N.S.	43½	43	42½
Kingston, N.S.	42	41½	42½
Berwick, N.S.	36½	35½	35½
Weston, N.S.	37	37	36½
Kingsport, N.S.	36½	35½	35½
Kentville, N.S.	31½	32	32
Port Williams, N.S.	30½	29½	29
Horton Landing, N.S.	29	29	28
Hantsport, N.S.	26	26	27½
Hartville, N.S.	25	25	25

A—Apples in packages, except hampers, and carrots.
B—Apples in hampers and pears.
C—Potatoes.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53553

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 6th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 1020, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 1020, approved herein, is 26½ cents per 100 pounds; one and one-half cents per 100 pounds to be deducted on account of water movement.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53560

In the matter of the application of G. C. Ransom, agent, on behalf of the Canadian National Railways, the Canadian Pacific, The Lake Erie & Northern, the Toronto, Hamilton & Buffalo, and the Wabash Railway Companies, and the New York Central (Michigan Central) Railroad Company, for permission to amend tariffs, on less than statutory notice, to restrict the application of rates on fruits, fresh, melons and vegetables, fresh or green, from shipping points other than Montreal, Quebec, to domestic (that is, Canadian grown) produce.

File No. 27612.142.

FRIDAY, the 9th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that when the rates in question were published they were intended to apply only on Canadian-grown produce, but through clerical error the word, "domestic," was omitted from the tariffs, which has permitted the movement of competing imported fruit under said rates, resulting in complaints from Canadian producers; and upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the railway companies hereinbefore named be, and they are hereby, granted leave to issue, on one day's notice, amendments to the following tariff schedules, namely:—

Item 5515, 1st Revised Page 198A and 2nd Revised Page 198B, Canadian National Railways Tariff C.R.C. No. E-2115,

Item 1640A, Supplement 19, Canadian Pacific Railway Tariff C.R.C. No. E-4775,

Items 208 to 209-3, Supplement 18 to New York Central (Michigan Central) Railroad Tariff C.R.C. No. 3642,

Item 75A, Supplement 18, Toronto, Hamilton & Buffalo Railway Tariff C.R.C. No. 1610,

correcting the said error in publication of the rates on fruits, fresh, melons and vegetables, fresh or green, so as to restrict the application of such rates from shipping points other than Montreal, Quebec, to domestic (Canadian-grown) produce.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53569

In the matter of the application of the Crow's Nest Southern Railway Company (Great Northern Railway Company), hereinafter called the "Applicant Company," under Section 330 of the Railway Act, for approval of Supplement No. 2 to Standard Freight Tariff C.R.C. No. 1798, on file with the Board under file No. 39874:

WEDNESDAY, the 14th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That Supplement No. 2 to the applicant company's Standard Freight Tariff C.R.C. No. 1798, on file with the Board under file No. 39874, be, and it is hereby, approved; the said tariff, with a reference to this Order, to be published in at least two consecutive weekly issues of the *Canada Gazette.*

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53570

In the matter of the applications of the Canadian Pacific Railway Company and the Algoma Central and Hudson Bay Railway Company, hereinafter called the "Applicant Companies," for permission to amend tariffs naming rates on iron and steel articles, in carloads, from Sault Ste. Marie, Ontario, to Montreal, Quebec, Windsor, Walkerville, and St. Catharines, Ontario, on less than statutory notice.

File No. 27612.143.

WEDNESDAY, the 14th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Whereas the applicant companies desire to cancel, effective October 19, 1936, on three days' notice, competitive rates on iron and steel articles, as published in items 200 and 210-A in Canadian Pacific Railway Tariff C.R.C. No. E-4775 and in item 10 in Algoma Central and Hudson Bay Railway Tariff C.R.C. No. 920, and to establish, effective the same date, on three days' notice, in Canadian Pacific Railway Tariff C.R.C. No E-4505 and Algoma Central and Hudson Bay Railway Tariff C.R.C. No. 914, rates between the same points on the same articles lower than now published therein and, with said applications, there has been filed copy of a letter from the shippers consenting to the proposed tariff amendments,—

It is ordered: That the applicant companies be, and they are hereby, granted leave to issue supplements to the said tariffs making such amendments effective October 19, 1936, on three days' notice.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53595

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

MONDAY, the 19th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

It is ordered: That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement	27	to	Tariff	C.R.C.	No.	E-1239.
"	62	"	"	"	"	E-1244.
"	33	"	"	"	"	E-1504.
"	34	"	"	"	"	E-1504.
"	25	"	"	"	"	E-1906.
"	7	"	"	"	"	E-1976.
"	25	"	"	"	"	E-2248.
"	3	"	"	"	"	E-2381.
"	26	"	"	"	"	E-2382.
"	3	"	"	"	"	E-2444.
Tariff	C.R.C.	No.	E-2467.			
"	"	"	E-2468.			
"	"	"	E-2469.			

H. GUTHRIE,
Chief Commissioner.

GENERAL ORDER No. 558

In the matter of the application of the Bell Telephone Company of Canada, hereinafter called the "Applicant Company," under Section 375 of the Railway Act, for approval of Form 1371, "Traffic Agreement," on file with the Board under Case No. 538.

TUESDAY, the 6th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading what is filed in support of the application, and the consents of the Ontario Municipal Board and the Quebec Public Service Commission, filed; and upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered:

1. That the said Form No. 1371, "Traffic Agreement," to be entered into between the applicant company and any other company, municipality, or corporation having authority to construct or operate a telephone system or line, on file with the Board under Case No. 538, be, and it is hereby, approved.

2. That General Orders numbered 114, 375, 376, 409, and 418, dated respectively November 12, 1913, March 17, 1923, March 27, 1923, November 5, 1924, and June 26, 1925, made herein, be rescinded.

H. GUTHRIE,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, AUGUST, 1936

Railway Accidents..	301 with	29 killed,	286 injured.
Railway Accidents at Highway Crossings..	26 "	36 "	42 "
	327	65	328

	Killed	Injured
Passengers.. .. ..

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXVI | Ottawa, November 15, 1936 | No. 17

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Application of the Canadian National Railways for an Order under Section 257 of the Railway Act authorizing the substitution of wig-wags and bells for gates at Church, St. George, Lutz, and Queen Street crossings, in the City of Moncton, N.B.

Files Nos. 38681.10; 38681.10.1; 38681.10.2, 38681.10.3.

JUDGMENT

COMMISSIONER STONE:

The question at issue in this application is whether the substitution of bell and wig-wag signals will be as efficient to the conditions of traffic at Church, St. George, Lutz, and Queen streets, in the city of Moncton, N.B., and give the same adequate warning and protection in the interest of public safety as the existing gates.

On October 3, 1935, the Canadian National Railways made application to the Board covering each case, in which it was stated that the proposed wig-wag and bell signals would be manually operated from the tower located near Queen street. The detail is as follows:—

St. George street: Provide one wig-wag on north side, with bell; south side, no bell.

Church street: Provide one wig-wag on north side, no bell; south side with bell.

Lutz street: Provide one wig-wag on north side with bell; south side, no bell.

Queen street: Provide one wig-wag on north side, no bell; south side with bell.

Annunciators are also to be provided to inform the operator of approaching trains on all tracks from the east, as well as switches, so that the ringing of the bells could be controlled when indicators show that rear of trains have passed the crossings. It was further stated that the proposed changes would permit the railway company to close down the existing tower at St. George street and dispense with the services of the gatemen at a saving of approximately $3,700 per annum.

Attached to the application are plans giving a description of the proposed installation together with statement of traffic for a 48-hour period taken in the month of June, 1935.

The City Council of Moncton filed objections to the proposed change in crossing protection, and express the opinion that the application was purely an

economic measure on the part of the railway company and not an enhancement of public safety as the railway tracks are frequently occupied by incoming and outgoing trains, but with wig-wags and bells the human element enters the danger aspect and will not entirely obviate the danger from another train on the other track, while with gates down all street traffic is at a standstill, and prevented from starting over the railway tracks too soon after the passing of the rear end of a train.

This case was heard at Moncton, N.B., on November 15, 1935, when counsel appeared for the railway company; Alderman Marks, the City Engineer, City Clerk, and Chief of Police appeared for the city of Moncton, while Dr. O. B. Price appeared on behalf of the citizens generally.

Counsel for the applicant contended that the purpose in seeking to change the existing method of protection at these four crossings is primarily one of economy consistent with public safety; that the gates were installed in the years 1919 and 1920, and since then a number of cases were recorded in which automobiles had broken the gates, but no case could be recalled where personal injuries or fatalities had occurred; that switching movements over Queen and Lutz streets were more numerous than over Victoria street where wig-wag signal protection has been installed; and that there was an open view for users of the highways at all these crossings and the percentage of traffic less than at other places where similar change in protection had been authorized.

Representatives appearing on behalf of the city of Moncton strongly opposed the substitution of the existing gate protection by wig-wag and bell signals. It was stated that in 1913 elaborate plans were under way for the elimination of these level crossings but that owing to the outbreak of the war in 1914 the contemplated plans were temporarily abandoned, and later gates were substituted in some places; that the number of school children using the crossings at Church and St. George streets were under-estimated in the railway company's submission showing the census of traffic; that of recent years the snow has been from eight to ten feet deep and when snow-ploughs go through on the railway the snow is banked up and would obscure wig-wag signals; that passenger busses were being operated over St. George street crossing, and that switching movements over Lutz, Queen and Victoria streets are frequently made with only light switching engines to stop a long line of freight cars on which the brakes had not been coupled and could not be stopped within a short distance; and that for the safety of the public the present protection should be retained until such time as the railway tracks can be lowered.

Subsequent to the hearing the Moncton Trades and Labour Council advised the Board that it was opposed to the proposed plan of dispensing with the present gate protection for wig-wag signals. The New Brunswick Accident Prevention Association stated that it did not wish to see the gates removed and replaced by other safety devices if such a change would in any way lessen the protection afforded at these crossings.

From the evidence submitted it is apparent that in the year 1913 the railway company had under consideration the question of grade separation at all crossings on streets involved in this application, as well as at Victoria and Robinson streets, but this plan was temporarily abandoned owing to the outbreak of the war in 1914.

In the years 1919 and 1920 the railway company, of its own volition and at its own expense, erected manually operated gates at Church, St. George, Queen and Lutz streets. On October 20, 1933, the railway applied to the Board for the approval of gate protection at these four crossings, which was granted by Order of the Board No. 50475 of November 1, 1933, upon the recommendation of the Board's Chief Engineer.

Order of the Board No. 38900, dated April 27, 1927, approved the plan submitted by the Canadian National Railways showing bells and wig-wags

proposed to be installed at Robinson and Victoria streets, in the city of Moncton, province of New Brunswick, at the points crossed by the railway, and provided that 40 per cent of the cost of installation be paid out of the Railway Grade Crossing Fund. The order was the result of an accident at the Victoria street crossing on January 23, 1927.

By Order No. 52262, dated September 24, 1935, the railway was required to install two additional bells and wig-wags at the said crossings. Eighty-five per cent of the cost of installing the said bells and wig-wags, not exceeding, however, the sum of $1,190, was, under the order, with the approval of the Governor in Council by Order in Council P.C. 2910, dated September 18, 1935, to be paid out of the Railway Grade Crossing Fund from the amount appropriated to that fund under the Supplementary Public Works Construction Act, 1935. The appropriation making the money available for the purpose was transferred to that fund by Order in Council P.C. 2024, of July 16, 1935.

Church street extends from the main retail district adjacent to the city market through a residential district connecting with Donald avenue in the municipality of Sunny Brae. Approaching the railway from the north, Church street inclines towards the railway tracks. There is a deep cut to the east wherein the railway tracks are depressed developing very short view lines from this street.

St. George street is one of the principal arteries of traffic over which frequent bus service is operated. The intersection of Church and St. George streets is in close proximity to, and south of the railway, creating a hazard to street traffic, making necessary police supervision at certain hours of each week day.

Queen and Lutz streets are situated close to the main retail district and the railway yard; the intersection for these streets being located just north of the railway. The passenger depot is also within a short distance. Switching movements over these two crossings are frequent, more particularly during the fall and winter months.

The statements showing the census of traffic were taken about the middle of June, 1935, when railway traffic is usually at its minimum. In the summer months tourist traffic throughout the Maritime Provinces and through Halifax require additional train service. Halifax being one of the principal ocean ports of Canada, rail business and switching movements increase considerably over these crossings during the winter months, and in addition to this there are the numerous snow-plough and flanger trains required to clear the tracks of snow, which is piled up on both sides of the railway until it can be removed, or allowed to melt in the spring of the year.

In recent years the railway company has introduced rail motor cars which in many cases, are not equipped with a warning device so that street traffic may be made aware of their approach, and which cannot be seen from the highway as quickly as trains. No record of the number of this type of rail conveyance is shown. These motor cars are used by employees of the railway, telegraph and other service.

The street intersections referred to herein develop additional hazards which do not apply to other points where applications have been granted to railways to change its form of protection from gates to wig-wags and bells. Each case has to be decided on its merits regardless of statistical information as to results elsewhere.

In my opinion the hazards at the streets involved in the applications set out herein require gate protection until such time as grade separation can be undertaken. Therefore, I would dismiss the application.

OTTAWA, October 5, 1936.

Application of the Canadian National Railways, under Section 257 of the Railway Act, for an Order authorizing the substitution of bells and wig-wags for gates at Church Street, St. George Street, Lutz Street and Queen Street Crossings in the City of Moncton, New Brunswick.

Files 38681.10, 38681.10.1, 38681.10.2, 38681.10.3

Heard at Moncton, New Brunswick, November 15, 1935.

JUDGMENT

COMMISSIONER STONEMAN:

This application, which was heard at Moncton, N.B., on November 15, 1935, is made by the Canadian National Railways, who ask for an order of the Board, authorizing the substitution of manually operated wig-wags and bells at four crossings, namely, Church street, St. George street, Lutz street, and Queen street, in the city of Moncton, N.B., for the gates now being manually operated thereat.

The proposed protection at St. George street is to provide one wig-wag on the north side of the railway with bell; and a wig-wag on the south side of the railway without bell.

At the crossing of Lutz street, it is proposed to provide one wig-wag on the north side of the railway with bell; and one wig-wag on the south side of the railway without bell.

At the crossing of Church street, it is proposed to provide one wigwag on the north side of the railway without bell; and one wig-wag on the south side of the railway with bell.

At the crossing of Queen street, it is proposed to provide one wig-wag on the north side of the railway without bell; and one wig-wag on the south side of the railway with bell.

It will be noted that at each of these crossings, although it is proposed to provide double wig-wags, the bell will be attached to just one device. The wig-wags are to be manually operated from an existing tower at Queen street; annunciators to be provided to inform the operator of approaching trains on all tracks from the east. In addition, indicators are to be installed in the tower, to inform the operators when rear ends of trains have passed over the crossings, so as to enable them to stop operation of the signals by means of a switch.

The applicants admit quite frankly that the application is made primarily on the ground of economy, consistent with public safety, the saving to the railway company being estimated at $3,750 per year.

The applicants submit that similar conditions have existed at other crossings, where applications made to the Board for the installation of bells and wig-wags in lieu of gates have been granted.

Alderman Marks, representing the city of Moncton, objected to the change in protection being made for the following reasons:—

(1) The liability of the city of Moncton in cases of accident at these crossings, if the application to substitute bells and wig-wags for the existing gates were granted.

(2) That, in his opinion, the gates would be much more effective protection in foggy weather and in snowstorms than the bells and wig-wags.

(3) That the gates had been in operation for many years, and he was of opinion that the saving was not sufficient justification for the substitution of any other form of protection.

Mr. Martin, city engineer of Moncton, stated that he had made no investigation as to the efficiency of the bell and wig-wag protection, outside of his local observations, but he endorsed the statements of Alderman Marks, in objection to the bells and wig-wags, as he felt that the gates were more effective protection.

The Chief of Police of the city of Moncton took exception to the proposed change in the form of protection at these crossings, on the ground that during the winter months there was very deep snow, and a view of the wig-wag signals would be obstructed. He was of opinion that gates would be better protection than bells and wig-wags in foggy weather. With reference to the danger to school children passing over these crossings, the Chief of Police stated that at the present time the Police Department have a man stationed at the crossings of St. George and Church streets, during the hours that school children habitually cross; and that in the event of the change in protection being made by the railway company, this special policing would be continued.

Doctor Price, a former Member of Parliament for Westmorland, N.B., asked the permission of the Board to state his objections to the proposed change in protection at these crossings; these objections were made largely on the ground that certain men would be thrown out of employment, if the gates were discontinued.

The decision of the Board in these cases has been considerably delayed, in order to permit the railway companies to prepare statements showing the number of accidents at various crossings on the Canadian Pacific and Canadian National Railways, for a five-year period, January 1, 1931, to December 1, 1935.

The railway companies were requested to file with the Board statements from their records, indicating the number of crossings protected by each type of protection, and the number of accidents which had occurred at the different crossings. Considerable time was required to secure this information, and for the subsequent analyses of the same by officers of the Board.

Taking into consideration the two forms of protection involved in this application, namely gates and bells and wig-wags, a summary of the analyses of the figures furnished by the railway companies provides the following information:—

Gates had sixty (60) accidents for 202 installations;

Bells and wig-wags had one hundred and one (101) accidents for three hundred and forty (340) installations.

Based on percentages, the comparison between gates and bells and wig-wags indicates that:—

Gates constituted 37·3 per cent of the total installations, and had 37·3 per cent of the accidents;

Bells and wig-wags constituted 62·7 per cent of the total installations, and had 62·7 per cent of the accidents.

The accidents referred to above are only those that were attended with personal injury or death, and do not include the very large number of cases where crossing gates were broken by impact from highway traffic, which of course rendered it necessary to resort to some other form of protection until repairs could be effected.

If we take into account the cases of personal injury and also the crashing of gates, the comparison is as follows:—

For a five-year period 1931-1935 (in):

Total gate installations	202
Total bell and wig-wag installations	340
Total both kinds	542

Gate installations comprised 37.3 per cent of the whole.
Bell and wig-wags comprised 62.7 per cent of the whole.

Accidents at crossings protected by gates	566
Accidents at crossings protected by bells and wig-wags	184
Total for both kinds of installations	750

Gates had 75.5 per cent of the 750 accidents; with 37.3 per cent of the total installations.

Bells and wig-wags had 24.5 per cent of the 750 accidents; with 62.7 per cent of the total installations.

I am of opinion that the information contained in these statistics, as filed by the railway companies, makes it abundantly clear that bell and wig-wag protection is at least as safe as gate protection.

In so far as the evidence of the three witnesses previously referred to is concerned, Alderman Marks, representing the city of Moncton, suggested that the liability of the city, in case of accident at these crossings, if the application to substitute bells and wigwags for the existing gates were granted, would be changed; I think it is quite clear that if the application were granted, there would be no change in the liability of the city of Moncton.

With reference to the opinion of the witnesses that gates would be more effective protection in foggy weather and in snow storms, I am strongly of opinion that a signal that is audible, as well as visible, is a much more effective warning, when visibility is poor, than a gate painted white, with a small black stripe, and a dim red light hanging in the centre of it. The bell and wig-wag protection consists of a large red disk which swings back and forth in front of the highway user, while the bell can be heard distinctly.

Neither of the forms of protection involved in this case is infallible, but if the pedestrians or those engaged in vehicular traffic over these crossings take a reasonable responsibility, in so far as their own safety is concerned, the bell and wig-wag protection should prove adequate. There are, of course, certain users of the highway that no form of railway crossing protection can protect.

In the present case, I feel that there is nothing to indicate that the conditions surrounding these crossings differ materially from those where the applications of the railway companies to substitute bell and wig-wag protection for gates have been granted.

The saving to be made in this case, if the application is granted, is substantial, and I feel that the proposed protection is as good as the present protection.

Therefore, I would grant the application, the cost of installation and maintenance to be upon the applicants.

OTTAWA, October 14, 1936.

The Assistant Chief Commissioner concurred.

ORDER No. 53600

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for authority to substitute wigwags and bells for gates at the crossing of Church Street, in the City of Moncton, Province of New Brunswick.

File No. 38681.10

SATURDAY, the 17th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Moncton, New Brunswick, November 15, 1935, in the presence of counsel for and representatives of the applicants and the city, and what was alleged,—
It is ordered:

1. That leave be, and it is hereby, granted the applicants to install, in lieu of the gates approved under Order No. 50475, dated November 1, 1933, one wigwag on the north side of the railway, without bell, and one wigwag on the south side of the railway, with bell, at the crossing of Church street, in the city

of Moncton, province of New Brunswick, in accordance with the Standard Specifications for Highway Crossing Signals, approved under General Order No. 468, dated March 12, 1929, as amended by General Orders Nos. 521 and 553, dated respectively November 2, 1933, and March 26, 1936; the said wigwags to be manually operated from the tower at Queen street, and annunciators to be installed in the tower to inform the operator of approaching trains from the east on all tracks, and also indicators to inform the operator that the rear ends of trains have passed over the crossing, so that the operation of the bell and wigwags may be properly controlled.

2. That detail plans be filed for the approval of an engineer of the Board.

3. That the cost of installing and maintaining the said wigwags and bell be borne and paid by the applicants.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53601

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for authority to substitute wigwags and bells for gates at the crossing of St. George Street, in the City of Moncton, Province of New Brunswick.

File No. 38681.10.1

SATURDAY, the 17th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Moncton, November 15, 1935, in the presence of counsel for and representatives of the applicants and the city, and what was alleged,—

It is ordered:

1. That leave be, and it is hereby, granted the applicants to install, in lieu of the gates approved under Order No. 50475, dated November 1, 1933, one wigwag on the north side of the railway, with bell, and one wigwag on the south side of the railway, without bell, at the crossing of St. George street, in the city of Moncton, province of New Brunswick, in accordance with the Standard Specifications for Highway Crossing Signals, approved under General Order No. 468, dated March 12, 1929, as amended by General Orders Nos. 521 and 553, dated respectively November 2, 1933, and March 26, 1936; the said wigwags to be manually operated from the tower at Queen street, and annunciators to be installed in the tower to inform the operator of approaching trains from the east on all tracks, and also indicators to inform the operator that the rear ends of trains have passed over the crossing, so that the operation of the bell and wigwags may be properly controlled.

2. That detail plans showing the layout be submitted for the approval of an engineer of the Board.

3. That the cost of installing and maintaining the said wigwags and bell be borne and paid by the applicants.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53602

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for authority to substitute wigwags and bells for gates at the crossing of Lutz street, in the city of Moncton, Province of New Brunswick.

File No. 38681.10.2

SATURDAY, the 17th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Moncton, New Brunswick, November 15, 1935, in the presence of counsel for and representatives of the applicants and the city, and what was alleged,—

It is ordered:

1. That leave be, and it is hereby, granted the applicants to install, in lieu of the gates approved under Order No. 50475, dated November 1, 1933, one wigwag on the north side of the railway, with bell, and one wigwag on the south side of the railway, without bell, at the crossing of Lutz street, in the city of Moncton, province of New Brunswick, in accordance with the Standard Specifications for Highway Crossing Signals, approved under General Order No. 468, dated March 12, 1929, as amended by General Orders Nos. 521 and 553, dated respectively November 2, 1933, and March 26, 1936; the said wigwags to be manually operated from the tower at Queen street, and annunciators to be installed in the tower to inform the operator of approaching trains from the east on all tracks, and also indicators to inform the operator that the rear ends of trains have passed over the crossing, so that the operation of the bell and wigwags may be properly controlled.

2. That detail plans of the proposed installation be submitted for the approval of an engineer of the Board.

3. That the cost of installing and maintaining the said bell and wigwags be borne and paid by the applicants.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53603

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for authority to substitute wigwags and bells for gates at the crossing of Queen street, in the city of Moncton, Province of New Brunswick.

File No. 38681.10.3

SATURDAY, the 17th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Moncton, New Brunswick, November 15, 1935, in the presence of counsel for and representatives of the applicants and the city, and what was alleged,—

It is ordered:

1. That leave be, and it is hereby, granted the applicants to install, in lieu of the gates approved under Order No. 50475, dated November 1, 1933, one

wigwag on the north side of the railway, without bell, and one wigwag on the south side of the railway, with bell, at the crossing of Queen street, in the city of Moncton, province of New Brunswick, in accordance with the Standard Specifications for Highway Crossing Signals, approved under General Order No. 468, dated March 12, 1929, as amended by General Orders Nos. 521 and 553, dated respectively November 2, 1933, and March 26, 1936; the said wigwags to be manually operated from the tower at Queen street, and annunciators to be installed in the tower to inform the operator of approaching trains from the east on all tracks, and also indicators to inform the operator that the rear ends of trains have passed over the crossing, so that the operation of the bell and wigwags may be properly controlled.

2. That detail plans showing the proposed installation be submitted for the approval of an engineer of the Board.

3. That the cost of installing and maintaining the said bell and wigwags be borne and paid by the applicants.

H. GUTHRIE,
Chief Commissioner.

Application of the Council of the Town of Deloraine, Manitoba, for an Order of the Board declaring the Town to be relieved from maintaining the crossing of Broadway Street over the tracks of the Canadian Pacific Railway, in the Town of Deloraine, Manitoba.

File No. 37350

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Under date of April 30, 1930, there was forwarded to Mr. E. P. Flintoft of the Canadian Pacific Railway Company, Montreal, copy of the application to the Board of Railway Commissioners, making application for the issuing of an order by that Board declaring the crossing of Broadway street over the Canadian Pacific Railway tracks, in the town of Deloraine, a public crossing; also filing a print of plan showing the location of this crossing. The application of the town of Deloraine reads as follows:—

> " Application is hereby made to the Board of Railway Commissioners for the issuing of an order by the Board declaring the crossing of Broadway street over the tracks of the Canadian Pacific Railway in the incorporated town of Deloraine, in the province of Manitoba, to be a public crossing.
>
> " Dated at Deloraine in the province of Manitoba this twenty-second day of April, A.D. 1930."

The resolution of the town of Deloraine reads as follows:—

> " Resolution passed by the Council this twenty-second day of April, A.D. 1930, that the Secretary-Treasurer be authorized to make formal application to the Board of Railway Commissioners for the issuing of an order to declare the crossing of Broadway street over the tracks of the Canadian Pacific Railway in the town of Deloraine a public crossing.
>
> " Carried.
>
> " (Sgd.) F. J. HAYS, *Mayor.*
>
> " Mover (Sgd.) G. W. WHITTAN.
> " Seconder (Sgd.) R. J. PRICE."

"I, Donald Lamont Livingstone, Secretary-Treasurer of the town of Deloraine, do hereby certify that the above is a true and correct copy of a resolution passed by the council of the town of Deloraine at a regular meeting held on the twenty-second day of April, A.D. 1930.

"(Sgd). D. L. Livingstone,
"Secretary-Treasurer, Town of Deloraine."

Under date of April 30, 1930, the Board was written to by Messrs. George & Watson, solicitors for the town of Deloraine. This letter covered a copy of the resolution already referred to. On page two of the said letter appears the following wording:—

"If the application referred to meets with the approval of your Board, will you be kind enough to forward a copy of the Board order, together with one copy of the print, to the undersigned, and a copy of the Board order, together with one tracing, to the Highway Commissioner, province of Manitoba, Winnipeg, Man.

"Before making this application we took this matter up with the railway company on behalf of the town and received their approval of this crossing being made a public crossing."

Under date of May 9th, 1930, Mr. Flintoft wrote to the Board. This letter was received on May 10. Mr. Flintoft stated that the application and plan had been duly received from Messrs. George & Watson, solicitors for the applicant, and that the Canadian Pacific Railway Company had no objection to the issue of an order as applied for, providing the cost of any reconstruction of the crossing, together with the cost of maintenance, is borne by the applicant. It was stated the crossing was in existence. The correspondence on file shows that the crossing ranked as a private crossing prior to May 14, 1930. Mr. Flintoft also stated that he was sending a copy of his letter of May 9, 1930, to Messrs. George & Watson, solicitors, Deloraine, Manitoba.

Order No. 44717, dated May 14, 1930, issued authorizing the applicant municipality to construct and maintain, at its own expense, a highway crossing over the Canadian Pacific Railway at Broadway street, in the town of Deloraine, province of Manitoba, as shown on the said plan and profile on file with the Board under file No. 37350, and in accordance with "The Standard Regulations of the Board Affecting Highway Crossings."

Under date of October 4, 1935, the Board was written to by Messrs. George & Watson with reference to the crossing at Broadway street. It was stated that resolution was passed by the council of the town of Deloraine for a formal application to the Board for an order authorizing the said town to be relieved of the cost of maintaining the above described crossing. It was further stated that as far back as November 3, 1892, a resolution had been passed that the council was willing to convey to the Southwestern Colonization Railway all the original road allowance lying between the SE. 10-3-23 and the NE. 3-3-23, in the town of Deloraine, on condition that the said railway open up and register as public highways Mountain, Broadway and Lake streets. The municipality claims there was apparently a definite understanding at that time that the railway company was to give these crossings in exchange for the road allowance, which was afterwards conveyed to the railway company, but the railway company in turn never filed any plan showing these to be public crossings. They did, however, open up crossings on Mountain and Broadway streets which have been used ever since the town started. The municipality also states that these streets were treated by the railway as private crossings, and it was this that lead to the municipality making application in 1930. It is also stated that the crossing is now on a provincial highway.

Prior to the Broadway street crossing being made a public crossing, Broadway street on which the crossing is located was made part of Provincial Highway No. 21, and has since been under the jurisdiction of the Department of Highways, province of Manitoba, and maintained by it.

The railway submits that a search of its files does not admit any undertaking having been given by the company at any time providing for the opening of Broadway street and Mountain avenue as public crossings at the expense of the company. This has not been efficiently controverted.

The record of the application of 1930, and the various steps detailed in connection therewith, precludes the acceptance of the position that there could have been any doubt about the seniority of the railway at the point in question.

In the communication, dated September 24, 1936, Mr. M. A. Lyons, Chief Engineer of the Good Roads Board, Winnipeg, Manitoba, states:—

> ". . . in fact at present, Broadway street does not continue across the Canadian Pacific right of way. The Order in Council quoted above would therefore only pertain to Broadway street itself. Board Order No. 44717, dated the 14th day of May, 1930, simply granted leave for the construction and maintenance of the highway crossing over the Canadian Pacific Railway tracks at this point and did not open up Broadway as a street across the tracks. In addition to this, Mr. McGillivray, Highway Commissioner, under date of February 24, 1934, and again under date of June 15, 1934, advised Messrs. George & Watson, solicitors for the town of Deloraine, that the department would not undertake to assume responsibility for the maintenance of this crossing."

As the position is not entirely clear, Mr. Lyons was written to under date of October 2, 1936, referring to the letter in question, and asking him to kindly state whether the town or the department maintains Broadway street in the town of Deloraine. In letter of October 15th, Mr. Lyons wrote saying that Broadway street in the town of Deloraine is maintained by the Good Roads Board, Department of Public Works, province of Manitoba.

It does not appear to be material to follow this phase of the matter further. If the Board should direct the province to contribute to maintenance of the crossing this would at once bring up the question of jurisdiction, as the Order could not be made effective without the consent of the province. It would appear, therefore, that whether the town or the department assumes this cost is a matter for adjustment between themselves.

I do not consider we would be justified in amending Order No. 44717 as applied for by the applicant.

October 22, 1936.

The Deputy Chief Commissioner and Commissioner Stoneman concurred.

ORDER No. 53633

In the matter of the Order of the Board No. 44717, dated May 14, 1930, authorizing the town of Deloraine, in the province of Manitoba, at its own expense, to construct and maintain a highway crossing over the Canadian Pacific Railway at Broadway street;

And in the matter of the application of the said town for an Order relieving it from the cost of maintaining the said crossing.

File No. 37350

SATURDAY, the 24th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Brandon, Manitoba, September 8, 1936, in the presence of counsel for the town of Deloraine and the Canadian Pacific Railway Company, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

Application of the Canadian Pacific Railway Company for an Order directing that the cost of maintenance of public crossings over the railway at certain points within the Municipal District of Bow Valley, No. 219, should be borne and paid by the said Municipal District, Mile 11·1 to 32·2 (10 crossings), in Townships 23 and 24, Ranges 24 to 27, inclusive, all west of the 4th Meridian.

File No. 35699.2

JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

Mr. McCaig who appeared for the railway put the application in a summarized form. The following is extracted therefrom (evidence vol. 635, p. 2266 to 2267):—

"Mr. MCCAIG: This is an application by the Canadian Pacific Railway Company for an order under sections 33, 34, 35, 39, 257 and 259 of the Railway Act that the costs of maintenance of ten different crossings which it is alleged are within the boundaries of Municipal District of Bow Valley, No. 219, be borne and paid by the said municipal district.

"The railway company in its application alleges that the main line of its railway from Medicine Hat to Calgary passing through the Municipal District of Bow Valley was constructed and in operation before the survey of any of the territory now comprised within the municipal district; and that an agreement was made before the formation of the Province of Alberta in the year 1905 by which the seniority of the company's railway over the road allowances in question was recognized by the Government of the Northwest Territories.

"In paragraph 3 it is alleged that an agreement was made on October 8, 1929, between the Crown and the railway company, which agreement is filed with the Board, and by that agreement it was admitted on behalf of the province that the railway company had seniority over the province at all of the crossings of original road allowances within certain townships which were marked blue on a map attached to the agreement. And it is alleged that all of these crossings mentioned in

the application are within townships which are shown coloured blue on that map.

"And the last paragraph alleges that we have rendered accounts to the municipal district for the cost of maintenance of these crossings, and the municipal district refuses to recognize responsibility for these costs. A summary of the costs is attached to the application."

At p. 2275 of the evidence the following discussion took place between Mr. McCaig and the Assistant Chief Commissioner:—

"The Assistant Chief: Do you admit that there are various crossings involved which were opened up without any formal sanction being given by the Board?

"Mr. McCaig: I am not prepared to admit that. These crossings are all on original road allowances.

"The Assistant Chief: You claim that legal sanction has been given to the opening up of all these crossings?

"Mr. McCaig: I think that is the fact, sir."

At p. 2310 of the evidence Mr. McCaig corrected the above statement in the following language:—

"There is one matter I want to be quite certain about that I did not mislead the Board. These crossings, as the map will show, are on road allowances. I think you asked if these crossings had been legally opened, I am not quite sure if I said yes. I do not mean that these road allowances were opened up by order of the Board, there are no orders of the Board in existence with regard to these crossings in the application."

In respect to my query, "You are relying on the agreement?" Mr. McCaig said: "On the agreement and the fact that the crossings are on the road allowances."

Until authorized by the Board the crossings involved are not legally in existence. (Town of Ford City v. G.T.R., 28 Can. Ry. Cas. 1, at p. 3; Bird v. C.P.R., 7 Can. Ry. Cas. 195, at p. 196; and City of Ottawa v. G.T.R., 14 Can. Ry. Cas. 185, at p. 186.)

Until the crossings in question have been legalized, I am of the opinion that the Board is not in a position to entertain the present application.

October 24, 1936.

The Deputy Chief Commissioner and Commissioner Stoneman concurred.

ORDER No. 53637

In the matter of the application of the Canadian Pacific Railway Company for an Order requiring that the cost of maintaining crossings of the railway at certain points within the municipal district of Bow Valley No. 219, in the province of Alberta, should be borne and paid by the said municipal district.

File No. 35699.2

Tuesday, the 27th day of October, A.D. 1936.

Hon. Hugh Guthrie, K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*
F. N. Garceau, K.C., *Deputy Chief Commissioner.*
J. A. Stoneman, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Calgary, September 21, 1936, in the presence of counsel for the railway company and

the municipal district of Bow Valley No. 219, and what was alleged; and upon its appearing that the crossings in question have not been authorized by order of the Board,—

It is ordered: That the application be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

Application to the Board of Railway Commissioners for Canada by the Vancouver, Victoria and Eastern Railway & Navigation Company to abandon the Colebrook-Ladner line, in the province of British Columbia. Heard at Vancouver, B.C., before the Board on Monday, July 15, 1935.

File No. 39105.1

JUDGMENT

McLean, Assistant Chief Commissioner:

After discussion took place in this matter negotiations were entered into with a view to seeing whether a mutually satisfactory arrangement could be arrived at. As a result of these negotiations, an agreement was arrived at July 15, which reads as follows:—

"1. That the order to suspend operations on the said line be made effective at once.

"2. That if within eighteen months from July 15, 1935, the Ladner Lumber Company and the Broder Canning Company plants at Ladner, B.C., resume operations, and sufficient freight will be available from same to justify the railway company restoring service on the said line, then in such event the order for suspension of service made this day shall be rescinded, otherwise at the expiration of the said eighteen months' period the said line of railway shall be entirely abandoned and the railway company will be at liberty to remove its rails, ties and equipment along the said line.

"Dated at Vancouver, B.C., this 15th day of July, A.D. 1935.

"(Sgd.) D. Whiteside,
Counsel for Broder Canning Company, Limited, Ladner Lumber Company, Limited, and Municipality of Delta.

"(Sgd.) F. D. Pratt,
Counsel for Vancouver, Victoria and Eastern Railway and Navigation Company."

Following this there issued Order No. 52120, dated July 31, 1935, which reads as follows:—

BOARD OF RAILWAY COMMISSIONERS FOR CANADA

In the matter of the application of the Vancouver, Victoria & Eastern Railway & Navigation Company, hereinafter called the "applicant company," under section 165A of the Railway Act, for approval of the abandonment of operation of its branch line of railway between Colebrook and Ladner, British Columbia.

File No. 39105.1

WEDNESDAY, the 31st day of July, A.D. 1935.

S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Vancouver, July 15, 1935, in the presence of counsel for the applicant company and the municipality of Delta, and what was alleged; and upon reading the memorandum of agreement, dated 15th July, 1935, between counsel for the Broder Canning Company, Limited, Ladner Lumber Company, Limited, and the municipality of Delta and counsel for the applicant company, filed—

It is ordered: That, subject to the terms of the said agreement, the abandonment of operation of the applicant company's branch line of railway between Colebrook and Ladner, in the province of British Columbia, be, and it is hereby, granted.

(Sgd.) S. J. McLEAN,
Assistant Chief Commissioner,
Board of Railway Commissioners for Canada.

On representations made that unsatisfactory conditions had developed in connection with the working out of the order, and that the railway and applicants were at arms length, it was deemed advisable to again set this matter down for hearing. The matter was heard at sittings of the Board in Vancouver, September 14, 1936.

At the hearing exception was taken to the conditions in connection with filing of supplements to tariffs, and it was also contended that the discussion had taken an unsatisfactory angle so far as concerned the operative date of the Order, and the attitude of the railway company in regard thereto.

Referring first to the question of tariffs, Mr. Whiteside, who appeared as counsel for the applicants, filed as exhibit No. 3 the special supplement to tariffs issued by the Great Northern Railway providing for cancellation of the rates therein to and from stations on the line extending from Colebrook to and including Ladner, and states: "What I complain about is that there is no mention of conditions. It is a publication to the world at large that there is no railroad there and no rates are in force, therefore it is impossible for our clients to negotiate for capital for the re-establishment of the industry." The Board's Traffic Department reports that the document in question is the usual form of cancellation notice filed by railways where, following authorization or approval by the Board, there is an abandonment of line or the closing of stations. This tariff cancellation notice was in the usual form of said notices, and its issuance necessary so that the tariffs enumerated therein would have cancelled therefrom the rates to and from the stations named because the operation of the said line was discontinued under the authority of the order named therein. In so far as it concerns what Mr. Whiteside refers to as "the conditions" the

Order of the Board No. 52120, dated 31st July, 1936, and the agreement therein referred to, fully covered the conditions, and which, of course, were in no way affected by the tariff cancellation notices in question.

As bearing upon a disturbed atmosphere in which discussion has taken place, reference may be made to letter of Mr. Hebb, General Agent, Great Northern Railway, Vancouver, addressed to Mr. Mason, 610 Dominion Building, Vancouver, B.C. Mr. Mason had been engaged in negotiations in connection with taking over the Ladner Lumber Company's mills at Ladner. The following is excerpted from the letter: "As mentioned to you, I did not think it would be possible to persuade our people to consent to running a regular service to serve this mill on account of the Canadian Railway Commission permitting us to abandon this line within a year. We are to-day in receipt of a letter from our Seattle office stating that the Colebrook Ladner Branch has been abandoned and rates have been cancelled, therefore we should inform you to this effect, that it will not be possible for us to establish new rates on this abandoned line: that means we could not perform a service on this line from your mill." The letter in question is dated March 12, 1936.

In letter from Mr. Pratt, solicitor for the company in Vancouver, dated June 16, 1936, to the Board, it is stated,—

> "I am now advised that no definite progress has been made in working out arrangements under the agreement of July 15, 1935, which you refer to. There has been no indication of any resumption of operations by the Broder Canning Company. There has been some inquiry as to whether we would be willing to resume operations in the event of a sale and reopening of the Ladner Lumber Company, but we have had no definite assurance that the mill would be purchased and reopened if railroad service were furnished and no assurance as to what the traffic would amount to if the mill were reopened.
>
> "I understand that it would cost about $20,000 to put the line into satisfactory condition for operation. I have no doubt that the company would be entirely willing to resume operations if sufficient traffic were assured to justify it. The company is perfectly willing to continue discussion of the matter with the parties interested, but we feel that we cannot give any definite consent to the reopening of the line without some assurance more definite than we have yet received as to the amount of traffic to be handled."

It will be noted that Mr. Hebb's letter is not in harmony with that of Mr. Pratt in regard to continuance of operation.

Since the hearing the Growers Seed Company, New Westminster, B.C., has brought to the attention of the Board a copy of a letter, dated October 2, 1936, which it has written to the railway company in which it states:—

> "We have to-day signed contract to put the Ladner plant into operation for next season. We expect to start installing machinery and overhauling the plant in the course of the next two or three weeks. We expect to haul some of our cans and perhaps all of them from Toronto or Montreal by Great Northern route."

There is also enclosed a copy of a letter addressed to the Great Northern Railway Company by the Growers Seed Company saying that negotiations are being entered into with a party who is desirous of installing a four-machine shingle mill on the water front at Ladner shipping from the siding of the said company.

At the hearing in Vancouver on September 14, 1936, further negotiations between the parties took place. Mr. Whiteside, on behalf of his clients, contended that eighteen months from the present date would be essential. Mr.

Pratt conceded three months from January 15, but he stated the result of the discussion was that the parties agreed that "we leave to the Board the determining of the date."

I am of the opinion that order might go providing for eighteen months extension from the date of the order implementing this judgment; and that the order provide further that if, at the expiration of eighteen months from the date hereof the Ladner Lumber Limited, its successors or assigns, shall have re-established its mill at Ladner, British Columbia, on an operating basis and shall have satisfied this Board that it can and will deliver to the said railway company at its mill at Ladner for shipment over said railway company's line and connecting lines of the Great Northern Railway Company system, an average of at least twenty (20) cars of lumber or shingles or manufactured lumber products per month (said average to be computed over any period of twelve (12) months after said Ladner Lumber Limited has commenced operating its said mill) then and in such event the said railway company shall proceed as expeditiously as possible to restore its freight service over said Colebrook-Ladner Branch upon the same basis as said railway was operated on and prior to the 15th day of July, 1935.

And it is further ordered that the said Order No. 52120 shall, except as varied by the terms of this order, remain in full force and effect.

October 30, 1936.

The Deputy Chief Commissioner and Commissioner Stoneman concurred.

ORDER No. 53667

In the matter of the application of Ladner Lumber Limited, the municipality of Delta, and the Broder Canning Company, Limited, for a reconsideration of the Order of the Board No. 52120, dated July 31, 1935, approving the abandonment of operation of the branch line of the Vancouver, Victoria & Eastern Railway and Navigation Company between Colebrook and Ladner, British Columbia, subject to the terms of an agreement, dated 15th July, 1935, between counsel for the Broder Canning Company, Limited, Ladner Lumber Limited, and the municipality of Delta, and counsel for the Vancouver, Victoria & Eastern Railway and Navigation Company.

File No. 39105.1

WEDNESDAY, the 4th day of November, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the matter at the sittings of the Board held at Vancouver, September 14, 1936, in the presence of counsel for the applicants and the railway company, and what was alleged,—

It is ordered:

1. That the abandonment of operation of the branch line of railway of the Vancouver, Victoria and Eastern Railway and Navigation Company between Colebrook and Ladner, in the province of British Columbia, approved by the

said Order No. 52120, dated July 31, 1935, be confirmed, but subject to and upon the condition that the period of eighteen months limited by agreement between the parties, as provided by the said Order, be extended for a further period of eighteen months from the date of this order.

2. That if, at the expiration of the said eighteen months, the Ladner Lumber Limited, its successors or assigns, shall have re-established its mill at Ladner, British Columbia, on an operating basis, and shall have satisfied the Board that it can and will deliver to the said railway company at its mill at Ladner, for shipment over the said railway company's line and connecting lines of the Great Northern Railway Company, an average of at least twenty cars of lumber, or shingles, or manufactured lumber products per month (the said average to be computed over any period of twelve months after the said Ladner Lumber Limited has commenced operating its said mill), then and in such event the said railway company shall proceed as expeditiously as possible to restore its freight service over the said Colebrook-Ladner Branch upon the same basis as the said railway was operated on and prior to the 15th day of July, 1935.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53606

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

WEDNESDAY, the 21st day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published to stations, index 666 to 722 inclusive, in Supplement No. 35 to Tariff C.R.C. No. E-4322, dated October 17, 1935, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 35 to Tariff C.R.C. No. E-4322, approved herein, are those published in Canadian Pacific Railway Tariff C.R.C. No. E-4203.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53607

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.15

WEDNESDAY, the 21st day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published to Temiskaming, Quebec, in Supplement No. 9 to Tariff C.R.C. No. 194, filed by the Fredericton and Grand Lake Coal and

Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 9 to Tariff C.R.C. No. 194, approved herein, is $4.15 per ton of 2,000 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53616

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 24th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in items 216 and 271 of Supplement No. 3 to Tariff C.R.C. No. 1006, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 3 to Tariff C.R.C. No. 1006, approved herein, are as follows:—

Item No.	To	Cents per 100 pounds Anthracite	Cents per 100 pounds Bituminous
216			
Coal	Windsor, N.S.	6¾	5¾
	Wolfville, N.S.	6	5¼
	Port Williams, N.S.	5¾	4¾
	Kentville, N.S.	5½	4½
	Berwick, N.S.	6¼	5½
	Kingston, N.S.	6¾	5¾
	Middleton, N.S.	7¾	6¾
	Bridgetown, N.S.	8¼	7¼
	Annapolis, N.S.	9	7¾
	Bear River, N.S.	9	7¾
	Digby, N.S.	9	8
	Church Point, N.S.	10	9
	Meteghan, N.S.	10½	9½
	Scotch Village, N.S.	7¾	6¾
	Kennetcook, N.S.	8¼	7¼
	South Maitland, N.S.	..	7¾
	Truro, N.S.	9	8
271			
Coke	Windsor, N.S.	7¼	
	Wolfville, N.S.	6¼	
	Port Williams, N.S.	6	
	Kentville, N.S.	5¾	
	Berwick, N.S.	7	
	Aylesford, N.S.	6½	
	Kingston, N.S.	7¼	
	Middleton, N.S.	7½	
	Bridgetown, N.S.	8¼	
	Annapolis, N.S.	9	
	Canning, N.S.	5¾	

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53617

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 24th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Boards orders:

1. That the toll published in item 516 of Supplement No. 4 to Tariff C.R.C. No. 1006, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 4 to Tariff C.R.C. No. 1006, approved herein, is 13 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53618

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 24th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Boards orders:

1. That the tolls published in Tariffs C.R.C. No. 1016 and No. 1021, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariffs C.R.C. Nos. 1016 and 1021, approved herein, are as follows:—

Item No.		Cents per 100 pounds
1	From Halifax, N.S.	43½
	" Yarmouth, N.S.	45
2	Halifax rates in effect prior to July 1, 1927	
3	From Halifax, N.S., to Toronto, Ont.	33
	" Yarmouth, N.S. to Toronto, Ont.	34
	" Yarmouth, N.S., to Montreal, Que.	33
4	To Guelph, Ont.	45½
	" Simcoe, Ont.	45
	" Toronto, Ont.	40½
5	" Toronto, Ont.	41½

6 From	Cents per 100 pounds To Montreal, Que.	Toronto, Ont.
Kingsport, N.S.	43	50
Canning, N.S.	43	50
Hillaton, N.S.	43	50
Sheffield Mills, N.S.	43	50
Centreville, N.S.	43	50
Weston, N.S.	47	54
Somerset, N.S.	47	54
Grafton, N.S.	46	53
Woodville, N.S.	46	53
Lakeville, N.S.	44½	51
Billtown, N.S.	44½	51
Grand Pré, N.S.	41½	47
Wolfville, N.S.	41½	47
Port Williams, N.S.	41	47½
Kentville, N.S.	41½	48
Coldbrook, N.S.	43	48
Cambridge, N.S.	44½	48½
Waterville, N.S.	44½	48½
Berwick, N.S.	45	48½
Aylesford, N.S.	45	48½
Auburn, N.S.	45	48½
Kingston, N.S.	45	48½
Wilmot, N.S.	44½	47½
Middleton, N.S.	43½	47½

One and one-half cents per 100 pounds to be deducted from all normal rates on account of water movements.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53619

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 24th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 1022, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 1022, approved herein, are as follows:—

To	Cents per 100 pounds Lake and Rail	All Rail
Sault Ste. Marie, Ont.	...	54½
Fort William, Ont. Port Arthur, Ont. West Fort William, Ont.	33½	54

One and one-half cents per 100 pounds to be deducted on account of water haul.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53620

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 24th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 1023, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company to report its proportion of tariff tolls as shown below.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 1023, approved herein, is as follows:—

Item No.		Cents per 100 pounds Tariff	Normal
1		11.8	14.8
2		17.3	21.4
3	To Paradise, N.S.	18.8	21.2
	Lawrencetown, N.S.	18.8	21.2
	Middleton, N.S.	18.8	23.6
	Aylesford, N.S.	19.3	22.8
	Berwick, N.S.	19.0	23.8
	Waterville, N.S.	26.1	31.7
	Kentville, N.S.	26.1	31.7
	Wolfville, N.S.	27.8	34.3
	Kingsport, N.S.	28.1	33.8
4		18.4	23.0
6		10.8	13.6
7		18.4	23.0
		Cents per drum	
5		59.5	74.5

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53621

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and the Order of the Board No. 53443, dated September 10, 1936, approving tolls published in Tariff C.R.C. No. 1014 filed by the Dominion Atlantic Railway Company.

File No. 34822.13

MONDAY, the 26th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that tolls from Wilmot, N.S., via Truro, N.S., are constructed by adding a switching charge of 1½ cents per 100 pounds to the rate from Middleton, such switching charge not being reduced under the Maritime Freight Rates Act,—

It is ordered: That the said Order No. 53443, dated September 10, 1936, be, and it is hereby, amended by adding the following at the end thereof, namely:—

"Except that on traffic from Wilmot, N.S., via Truro, N.S., the Dominion Atlantic Railway Company's proportion of tariff tolls is to be reported at 7½ cents per 100 pounds, and the proportion of normal tolls at 9 cents per 100 pounds to all destinations."

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53615

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.10

MONDAY, the 26th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Supplement No. 10 to Tariff C.R.C. No. 3, filed by the Maritime Coal, Railway and Power Company, Limited, under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 10 to Tariff C.R.C. No. 3, approved herein, is 2½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53643

In the matter of the application of the Transportation Commission of the Maritime Board of Trade, the provinces of New Brunswick, Nova Scotia, and Prince Edward Island, the Boards of Trade of Halifax, Saint John, Perth county, and Victoria county, the Associated Potato Shippers of New Brunswick, the Prince Edward Island Potato Growers' Association, Porter Brothers Limited, and Austin Scales for an Order extending the time within which they may apply to the Board for leave to appeal to the Supreme Court of Canada from Order No. 52644, dated January 7, 1936, refusing the application of the said Transportation Commission of the Maritime Board of Trade for a reduction in rates on potatoes.

File No. 34822.40

THURSDAY, the 29th day of October, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading the submissions filed on behalf of the applicants,—

It is ordered: That the time for making application to the Board for said leave to appeal be, and it is hereby, further extended until the 4th day of December, 1936.

H. GUTHRIE,
Chief Commissioner.

SUMMARY OF ORDERS ISSUED BY THE BOARD OF RAILWAY COMMISSIONERS

53504. Oct. 2—Requiring Dominion Atlantic Ry. to operate a mixed train service to accommodate passenger and L.C.L. freight traffic on its North Mountain Branch (Centreville to Weston, N.S.) on a tri-weekly basis from beginning of December each year until the end of April of the following year.

53505. Sept. 29—Authorizing C.P.R. to operate over connections with C.N. Rys. at Cyr Junction, and from mileage 0·0 to 18·87 in city of Edmunston, N.B.

53506. Sept. 29—Approving and authorizing clearances to loading dock, canopy and craneway located on C.P.R. spur for Chrysler Corporation of Canada, Ltd., at Windsor, Ont.

53507. Oct. 1—Approving under Maritime Freight Rates Act, sec 3, sub-sec. 3, joint tolls published in Supp. 6 to Tariff C.R.C. No. E-1543, filed by C.N. Rys. under sec. 3.

53508. Oct. 1—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, toll published in Tariff C.R.C. No. 32, filed by Sydney and Louisburg Ry. under sec. 9.

53509. Oct. 1—Approving under Maritime Freight Rates Act, sec. 3. sub-sec. 3, toll published in item 141 of Supp. 19 to Tariff C.R.C. No. E-4368 filed by C.P.R. under sec. 9.

53510. Oct. 1—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, toll published in item 116 of Supp. 10 to Tariff C.R.C. No. E-4369 filed by C.P.R. under sec. 9.

53511. Oct. 1—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in Tariff C.R.C. No. 1011 filed by Dominion Atlantic Ry. under sec. 9.

53512. Oct. 1—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in Tariff No. 749 filed by Temiscouata Ry. under sec. 9.

53513. Oct. 1—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published to North Devon, N.B., Trois Rivières, and Cap de la Madeleine, Que., filed by the Fredericton and Grand Lake Coal and Ry. Co. under sec. 9.

53514. Oct. 1—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in Tariff C.R.C. No. 196 filed by Fredericton and Grand Lake Coal and Ry. Co. under sec. 9.

53515. Oct. 2—Authorizing Great Northern Ry. to discontinue operation of its line from Fernie to Newgate, B.C., on condition that ties, rails, be not removed for a period of one year.

53516. Oct. 1—Declaring C.P.R. crossing, first north of Pheasant Point Station, Ont., protected to Board's satisfaction.

53517. Oct. 1—Declaring C.N. Rys. crossing, first north of Newmarket Station, Ont., satisfactorily protected so long as provisions of Order 34392, Nov. 23, 1923, are performed.

53518. Oct. 2—Directing C.N. Rys. to change location of their station building at Nicolet, Que., to or near site of old station of Quebec, Montreal and Southern Ry.

53519. Oct. 1—Authorizing C.P.R. to construct spur to serve Great Winnipeg Sanitary District, at Kildonan, Man.

53520. Oct. 2—Relieving C.N. Rys. from posting certain tariffs at stations at which the population is over 1,000 and not over 2,000, and directing that at stations at which the population is over 2,000 and not over 10,000, tariffs that are never used need not be posted.

53521. Oct. 2—Directing C.N. Rys. to install automatic bell and wigwag at crossing of Bristol Street, Liverpool, N.S.

53522. Oct. 2—Authorizing C.N. Rys. to construct spur to serve Central Refiners, Ltd., at Brandon, Man.

53523. Oct. 5—Authorizing Crow's Nest Southern Ry. (G.N.R.) to file tariffs providing for cancellation of tariffs containing rates, fares charges and regulations applying between points on said railway.

53524. Oct. 3—Approving Bell Telephone Co.'s Tariffs C.R.C. Nos. 6167, 6236, and 6708, covering exchange rates at Bowmanville and Wallaceburg, Ont., and Drummondville, Que.

53525. Oct. 5—Declaring C.N. Rys. crossing at Highbury Avenue, London, Ont., protected to Board's satisfaction.

53526. Oct. 6—Declaring C.N. Rys. crossing 500 feet north of Fraser Jct., switch, N.B., protected to Board's satisfaction.

53527. Oct. 5—Declaring Toronto, Hamilton and Buffalo Ry. crossing of Kenilworth Road, Bartonville, Ont., protected to Board's satisfaction.

53528. Oct. 5—Authorizing C.N. Rys. to reconstruct overhead bridge at mileage 65·8 Cascapedia Subd'n, Que.

53529. Oct. 5—Authorizing C.N. Rys. to reconstruct subway structure at Richelieu Street, St. Johns, Que.

53530. Oct. 6—Amending Order 53397, Sept. 3, 1936, by striking out paragraph 4 and substituting clause directing upon completion of overhead crossing of C.P.R. on north boundary of Sec. 32 and 33-35 and of Sec. 5-36-14 W3M., the crossing in SE¼ of Sec. 5-36-14 be closed.

53531. Oct. 6—Approving Niagara, St. Catharines and Toronto Ry. Standard Passenger Tariff C.R.C. No. 325.

53532. Oct. 6—Declaring Pere Marquette Ry. crossing of Gravel Road, Blenheim, Ont., satisfactorily protected so long as speed limitation of 10 miles an hour is in effect.

53533. Oct. 5—Declaring that a shipment of power boilers from Galt, Ont., to Picture Butte, Alta., was properly rateable as boilers as per item 26, page 189, Canadian Freight Classification No. 18, and not as boiler parts under item 24, page 2, of Supp. 3 of said classification.

53534. Sept. 28—Relieving C.P.R. from fencing from mileage 112·57 to 113·47, south side, and from mileage 112·57 to 112·86 north side, Sutherland Subd'n, Sask.

53535. Oct. 6—Authorizing C.N. Rys. to reconstruct timber trestle over 50th Avenue South-east, Calgary, Alta.

53536. Oct. 7—Authorizing C.N. Rys. to reconstruct bridge over Rosebud River, at mileage 67·2 Drumheller Subd'n, Alta.

53537. Oct. 7—Authorizing C.N. Rys. to reconstruct bridge over Rosebud River, at mileage 67·8 Drumheller Subd'n, Alta.

53538. Oct. 5—Approving New York Central Ry. (M.C.R.) plan showing actuated automatic traffic signals for protection of street traffic at intersection of Bridge Street and Victoria Avenue, Niagara Falls, Ont.

53539. Oct. 3—Authorizing C.N. Rys. to install double wigwag signals in lieu of flagman and speed limit of 10 miles an hour at crossing of Brock Street, Peterborough, Ont.

53540. Oct. 3—Authorizing C.N. Rys. to install double wigwag signals, in lieu of existing gates at crossings of King Street and Sherbrooke Street, Peterborough, Ont.

53541. Oct. 3—Authorizing C.N. Rys. to install double wigwag signal in lieu of existing gates at crossing of Charlotte Street, Peterborough, Ont.

53542. Oct. 3—Authorizing C.N. Rys. to install double wigwag signal in lieu of existing gates at crossing of Simcoe Street, Peterborough, Ont.

53543. Oct. 3—Authorizing C.N. Rys. to install double wigwag signals in lieu of existing gates at crossing of Hunter Street, Peterborough, Ont.

53544. Oct. 3—Authorizing C.N. Rys. to install double wigwags at crossing of Dalhousie Street, Peterborough, Ont.

53545. Oct. 7—Declaring C.P.R. crossing, first west of McLeod's Station, Que., protected to Board's satisfaction.

53546. Oct. 6—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls
53547. published in tariffs and supplements filed by the Dominion Atlantic Ry.
53548. under sec. 9.
53549.
53550.
53551.
53552.
53553.

53554. Oct. 8—Authorizing C.N. Rys. to reconstruct bridge over Rosebud River at mileage 67·9 Drumheller Subd'n, Alta.

53555. Oct. 8—Authorizing C.N. Rys. to reconstruct bridge over Rosebud River at mileage 67·6 Drumheller Subd'n, Alta.

53556. Oct. 8—Authorizing C.N. Rys. to reconstruct bridge over Rosebud River at mileage 75·4 Drumheller Subd'n, Alta.

53557. Oct. 8—Authorizing Ontario Department Highways to construct diversion of highway between Lots 5 and 6, Con. 3, Verulam Tp., Ont., at crossing of C.N. Rys.

53558. Oct. 8—Declaring C.P.R. crossing, first east of Whonnock Station, B.C., protected to Board's satisfaction.

53559. Oct. 8—Declaring C.P.R. crossing near Realm, B.C., protected to Board's satisfaction.

53560. Oct. 9—Authorizing C.N. Rys. C.P.R., Lake Erie & Northern Ry., Toronto, Hamilton & Buffalo Ry., Wabash Ry. and New York Central R.R., to issue amendments to tariffs to correct error in publication of rates on fruits, fresh, melons and vegetables, fresh or green, so as to restrict the application of such rates from shipping points other than Montreal, Quebec, to domestic (Canadian grown) produce.

53561. Oct. 9—Declaring C.N. Rys. crossing, second west of St. Tite Station, Que., protected to Board's satisfaction.

53562. Oct. 9—Authorizing C.N. Rys. to reconstruct bridge over Rosebud River at mileage 75·3 Drumheller Subd'n, Alta.

53563. Oct. 9—Authorizing C.N. Rys. to reconstruct highway bridge over east and west road allowance between Sec. 35-52-22 and Sec. 53-22-4 W4M., Alta.

53564. Oct. 8—Directing that 40 per cent of cost of installing bell and wigwag at C.N. Rys. crossing of Main Street, Mundare, Alta., be paid out of Railway Grade Crossing Fund.

53565. Oct. 8—Authorizing abandonment of operation of G.T.R. spur serving Doherty Organ Co., from Victoria Street to Ransford Street, Clinton, Ont.

53566. Oct. 8—Authorizing P.E.I. Dep't Public Works to construct diversion of St. Peters Road and carry it across C.P.R. at a point east of Tracadie Station, P.E.I.

53567. Oct. 10—Declaring New York Central R.R. crossing of Furnival Road, Rodney, Ont., protected to Board's satisfaction.

53568. Oct. 10—Authorizing C.P.R. to construct two extensions to spurs to serve Coldwater Crushed Stone, Ltd., in Lot 20, Con. 13, Tp. Medonte, Ont.

53569. Oct. 14—Approving Crow's Nest Southern Ry. (G.N.R.) Standard Freight Tariff C.R.C. No. 1798.

53570. Oct. 14—Authorizing C.P.R. and A.C. & H.B. Ry. to amend tariffs naming rates on iron and steel articles, in carloads, from Sault Ste. Marie, Ont., to Montreal, Que., Windsor, Walkerville and St. Catharines, Ont., on less than statutory notice.

53571. Oct. 10—Declaring C.P.R. crossing one-half mile north of Burbidge Station, Que., protected to Board's satisfaction.

53572. Oct. 13—Declaring C.P.R. crossing, second west of Hillcrest Station, Alta., protected to Board's satisfaction.

53573. Oct. 13—Declaring C.P.R. crossing ·7 of a mile south of Ironside Station, Que., protected to Board's satisfaction.

53574. Oct. 13—Authorizing C.N. Rys. to connect their Drummondville and Aston Subd'ns at Aston Jct., Que., to connect their Aston and Sorel Subd'ns at St. Gregoire, Que., and to connect their Nicolet and Sorel Subd'ns at Nicolet, Que.

53575. Oct. 10—Authorizing Alberta Dep't Public Works to construct highway crossing over C.N. Rys. in NE¼ Sec. 24-47-20 W5M., Alta.

53576. Oct. 13—Approving proposed relocation of freight and passenger shelter of C.N. Rys. at Indi, Sask.

53577. Oct. 13—Declaring Great Northern Ry. crossing of Powell Street, Vancouver, B.C., satisfactorily protected so long as speed limitation of eight miles an hour is in effect.

53578. Oct. 14—Authorizing C.N. Rys. to reconstruct highway bridge over north and south road allowance between Sec. 23 and 24-46-11 W4M., Alta.

53579. Oct. 13—Approving agreement between Bell Telephone Co., and Oro Telephone Co., Ltd.

53580. Oct. 14—Authorizing C.P.R. to construct spur to serve W. Robinson & Son Converters, Ltd., at Woodbridge, Ont.

53581. Oct. 14—Declaring C.N. Rys. crossing east of Coldbrook, N.B. (Carritte Crossing), protected to Board's satisfaction.

53582. Oct. 14—Approving service station contract between Bell Telephone Co., and Montreal, Light, Heat & Power Consolidated.

53583. Oct. 14—Authorizing Niagara, St. Catharines & Toronto Ry. to construct spur for Interlake Tissue Mills, Ltd., crossing St. Davids Street, Merritton, Ont.

53584. Oct. 14—Refusing application Central Alberta Dairy Pool, Ltd., and Sunny Alberta Creameries, Ltd., for reduction in rates on butter, C.L., from Alix and Red Deer, Alta., to Vancouver, B.C.

53585. Oct. 16—Authorizing C.N. Rys. to construct subway on Brown's Line Road, Lot 26, Cons. 2 and 3, Tp. Etobicoke, Co. York, Ont.

53586. Oct. 15—Approving C.N. Rys.' plan No. 17862/1 showing change in grade of overhead bridge at Baker Lake, N.B.

53587. Oct. 16—Authorizing C.N. Rys. to remove the station agent at Nelles Corners, Ont. (Caretaker to be appointed.)

53588. Oct. 16—Approving Bell Telephone Co. tariff C.R.C. No. 6186, 2nd Revised Sheet, covering exchange rates at Granby, Que.

53589. Oct. 16—Authorizing C.N. Rys. to reconstruct overhead bridge at Eva Street, Sudbury, Ont.

53590. Oct. 16—Authorizing C.N. Rys. to remove station agent at Victoria Harbour, Ont. (Caretaker to be appointed.)

53591. Oct. 16—Declaring C.P.R. crossing at St. Joachim, Que., protected to Board's satisfaction.

53592. Oct. 19—Declaring Ottawa & New York Ry. crossing, first south of Northfield Station, Ont., protected to Board's satisfaction.

53593. Oct. 19—Declaring C.N. Rys. crossing between Lennoxville and Waterville, Que. (Prouty's Crossing), protected to Board's satisfaction.

53594. Oct. 20—Declaring C.N. Rys. crossing, first east of Mount Brydges Station, Ont. (Adelaide Crossing), protected to Board's satisfaction.
53595. Oct. 19—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in tariffs filed by C.N. Rys. under sec. 3.
53596. Oct. 19—Authorizing C.P.R. to remove station agent at Macoun, Sask. (Caretaker to be appointed.)
53597. Oct. 20—Authorizing Sask. Dep't. Highways & Transp. to introduce less than standard clearances at C.P.R. crossing during construction of overhead structure near Roche Percee, Sask.
53598. Oct. 20—Authorizing C.N. Rys. to reconstruct highway bridge over north and south road allowance between Sec. 18-46-10 and 13-46-11 W4M. Alta.
53599. Oct. 19—Refusing application of City of Saskatoon, Sask., to straighten out projection, or jog, in Third Avenue, south of Thirty-Third Street, and approving crossing of C.N. Rys. at Memorial Avenue, at Thirty-Third Street, Saskatoon, Sask.
53600. Oct. 17—Authorizing C.N. Rys. to install, in lieu of gates, one wigwag signal on north side of railway, without bell, and one wigwag signal, with bell, on south side, at crossing of Church Street, Moncton, N.B.
53601. Oct. 17—Authorizing C.N. Rys. to install, in lieu of gates, one wigwag on north side of railway, with bell, and one wigwag on south side, without bell, at crossing of St. George Street, Moncton, N.B.
53602. Oct. 17—Authorizing C.N. Rys. to install, in lieu of gates, one wigwag on north side of railway, with bell, and one wigwag on south side, without bell, at crossing of Lutz Street, Moncton, N.B.
53603. Oct. 17—Authorizing C.N. Rys. to install, in lieu of gates, one wigwag on north side of railway, without bell, and one wigwag on south side with bell, at crossing of Queen Street, Moncton, N.B.
53604. Oct. 21—Authorizing C.N. Rys. to construct spur to serve Imperial Oil, Ltd., across Ash Street North, at Porcupine Plain, Sask.
53605. Oct. 21—Declaring C.N. Rys. crossing at mileage 113.3 Asquith Subd'n., Sask., protected to Board's satisfaction.
53606. Oct. 21—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published to stations, index, 666 to 722, inclusive, in Supp. 35 to tariff C.R.C. No. E-4322 filed by C.P.R. under sec. 9.
53607. Oct. 21—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, toll published to Temiskaming, Que., in Supp. 9 to tariff C.R.C. 194 filed by Fredericton & Grand Lake Coal & Ry. under sec. 9.
53608. Oct. 22—Authorizing C.P.R. and C.N. Rys. to close interlocking plant between 12 noon and 1.00 p.m., 4.40 p.m. and 6.00 p.m., 12 midnight and 1.00 a.m., and 3 a.m. and 7.50 a.m. daily at crossing at Drumbo, Ont.
53609. Oct. 22—Approving and authorizing clearances of buildings, poles and fences along C.P.R. tracks on St. Andrew and Dalhousie Streets, Quebec, Que.
53610. Oct. 22—Declaring C.N. Rys. crossing, first north of Ebenezer Station, Sask., protected to Board's satisfaction.
53611. Oct. 22—Declaring C.P.R. crossing, first east of Morden Station, Man., protected to Board's satisfaction.
53612. Oct. 23—Authorizing C.P.R. to construct spur to serve Dominion Construction Corpr'n., Ltd., in Lot 7, Con. 2, Tp. Etobicoke, Co. York, Ont.
53613. Oct. 22—Authorizing C.P.R. to construct spur to serve Dufferin Paving & Crushed Stone, Ltd., near Blairton, Ont.
53614. Oct. 26—Extending until Oct. 30, 1936, time within which C.P.R. may install double bells and wig-wags at crossing just west of Islington Station, Ont.
53615 Oct. 26—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, toll published in Supp. 10 to Tariff C.R.C. No. 3, filed by Maritime Coal, Ry. & Power Co., under sec. 9.
53616.
53617.
53618. Oct. 24—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls pub-
53619. lished in tariffs and supplements filed by Dominion Atlantic Ry. under
53620. sec. 9.
53621.
53622. Oct. 24—Rescinding Order 33014, Oct. 23, 1922, relieving C.N. Ry. from maintaining slow order at crossing west of Burlington, Ont.
53623. Oct. 22—Refusing application of Good Rich Refining Co., Ltd., for permission to relocate existing tank and C.N. Rys. siding at Scarboro, Ont.
53624. Oct. 26—Rescinding Orders of the Railway Committee of the Privy Council dated Dec. 13, 1899; Mar. 19, 1900; Apl. 21, 1900; May 30, 1900; May 31, 1900; Jan. 31, 1901; Feb. 1, 1901; and June 1, 1901; and Orders of the Board Nos. 4374, Feb. 7, 1908; 5925, Dec. 22, 1908; and 29126, Dec. 9, 1919, relative to crossing of Rutland R.R. and G.T.R. at Noyan Junction, Que.

53625. Oct. 24—Authorizing C.N. Rys. to divert their line between mileage 0·8 and 2·0 Chandler Subd'n, Que.
53626. Oct. 26—Authorizing C.P.R. to operate its trains over subway at mileage 124·63, Nipigon Subd'n, over Trans-Canada Highway, at Port Arthur, Ont.
53627. Oct. 27—Authorizing C.N. Rys. to construct connection with C.P.R. Bienfait Mine Spur at Bienfait, Sask.
53628. Oct. 27—Authorizing B.C. Dep't Public Works to construct highway crossing over C.N. Rys. at mileage 0·67, Fraser Subd'n, West of McBride, B.C.
53629. Oct. 27—Authorizing C.N. Rys. to remove station agent at Huntoon, Sask. (caretaker to be provided).
53630. Oct. 26—Authorizing Tp. Albion, Ont., to improve view at crossing of C.P.R. opposite lots 15 and 16, Con. 4, Tp. Albion, Ont.
53631. Oct. 26—Authorizing B.C. Dep't Public Works to construct road diversion and overhead crossing of C.P.R. at west end of yard at Haig, B.C.
53632. Oct. 26—Amending Order 52499, Nov. 27, 1935, by adding words "as amended by Order in Council P.C. 2746, dated 23rd October, 1936" after figures "1935" in 2nd line of paragraph 3 and by striking out figures "2,200.00" in 4th line of paragraph 3, and substituting therefor figures "2,810.92." Moving of existing bell at northwest angle of C.N. Rys. crossing of Irishtown Road, Sunny Brae, N.B.
53633. Oct. 24—Refusing application of Town of Deloraine, Man., to be relieved of cost of maintaining crossing over C.P.R. at Broadway street, Deloraine, Man.
53634. Oct. 26—Authorizing Sask. Dep't Highways & Transp. to construct diversion of No. 1 Highway and an overhead crossing of main line of C.P.R. in sec. 29-15-13 W3M., Sask., to close two crossings of C.N. Rys. at mileage 147·86 and 148; to construct new level crossing over C.N. Rys. in SW corner of SW¼ of Sec. 29, and to close crossing of C.P.R. "Y" track at mileage 109·08.
53635. Oct. 27—Declaring C.N. Rys. crossing of Cameron street, three-quarters of a mile north of Cannington, Ont., protected to Board's satisfaction.
53636. Oct. 28—Declaring C.N. Rys. crossing, first north of Swan River Station, Man., satisfactorily protected so long as speed limitation of 10 miles an hour is in effect.
53637. Oct. 27—Refusing application of C.P.R. that cost of maintenance of certain crossings in Municipal District of Bow Valley No. 219, Alta., be borne and paid by the said Municipal District.
53638. Oct. 28—Declaring C.N. Rys. crossing of Exmouth Street Road, about four miles east of Sarnia, Ont., protected to Board's satisfaction.
53639. Oct. 28—Declaring C.P.R. crossing, eleventh west of Saskatoon, Sask., protected to Board's satisfaction.
53640. Oct. 29—Declaring C.P.R. crossing, first west of Deroche, B.C., protected to Board's satisfaction.
53641. Oct. 29—Declaring C.N. Rys. crossing (Labrosse Street), second west of Moose Creek, Ont., protected to Board's satisfaction.
53642. Oct. 27—Amending Order 52257, Sept. 24, 1935, by striking out words "second public crossing east of Yamachiche Station" in preamble and substituting therefor the words "fourth crossing just west of Pointe du Lac Station."—C.P.R.
53643. Oct. 29—Extending until Dec. 4, 1936, time within which Transportation Commission of Maritime Board of Trade, et al, may apply to Board for leave to appeal to Supreme Court of Canada from Order 52644, Jan. 7, 1936, *re* application for reduction in rates on potatoes.
53644. Oct. 30—Declaring C.P.R. crossing of Golf Street, North Bay, Ont., protected to Board's satisfaction.
53645. Oct. 28—Authorizing County of Hastings, Ont., to construct diversion of County Road No. 14 between Coe Hill and Ormsby, Ont., west crossing of C.N. Rys. to be closed and east crossing to be converted into a farm crossing.
53646. Nov. 2—Declaring New York Central R.R. crossing just south of the Heights Station, Que., protected to Board's satisfaction.
53647. Nov. 2—Declaring C.N. Rys. crossing, first west of Stony Plain, Alta., protected to Board's satisfaction.
53648. Oct. 29—Approving C.N. Rys. plan showing northbound signal No. 1, fixed at caution, at crossing at Milton, Ont.
53649. Oct. 29—Authorizing Good Roads Board of Manitoba to construct subway under C.N. Rys. north of Fraction Section 10-18-21 WPM., in Rural Mun. of Strathclair, Man.
53650. Oct. 30—Authorizing Alberta Dep't Public Works to construct crossing over Northern Alberta Rys. in SE¼, Sec. 9-75-13, W6M., Alta., and closing crossing on east boundary of Sec. 9-75-13, W6M.

341

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXVI | Ottawa, November 18, 1936 | No. 18

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Dangerous Practices of Motorists, Drivers of Other Vehicles, and Pedestrians at Protected Crossings

In many cases accidents at highway crossings are due to negligence of those driving automobiles and other vehicles and of pedestrians. This negligence is found both at unprotected and protected crossings.

The Canadian National Railways lines from May 1, 1936, to October 31, 1936, show seventy-seven cases where there was danger at protected crossings due to the negligence of those using the crossings.

The Canadian Pacific Railway (Eastern Lines) from April 1, 1936, to September 30, 1936, and (Western Lines) from April 1, 1936, to September 30, 1936, show a total of two hundred and forty-four cases.

Notwithstanding safety devices and cautionary signals, people take chances and disregard safety. Motor accidents are becoming more frequent. Every sane motorist deplores this.

The Board hopes that the press will give as much publicity as possible to what is covered in the statement with the hope that it may educate motor drivers and others to be more careful at crossings.

If accidents are to be lessened, the sane motorist must educate the culpably negligent motorists, some of whose actions are recorded in the following lists:—

27987—1

Date	Time	Crossing	Licence No.	Dangerous Practices
April 21.....	10.50 p.m...	Strachan Ave. crossing, Bathurst Stn., Toronto, Ont.	Ont. N-3829.....	Passed traffic gate which was down and proceeded over crossing, breaking gate on the opposite side.
May 5.....	4.00 p.m...	Main St. crossing, Glencoe, Ont.	Ont. U-3611.....	Drove into crossing gates when they were down.
May 10.....	1.35 a.m...	Third public crossing south of Beaverton Stn., Ont.	Ont. N-417.....	Auto ran into side of ballast extra, striking car ahead of caboose, 50th car in train.
May 15.....	1.15 p.m...	Bridge St., Montreal.....	Que. F-6427.....	Driver failed to stop on signal from flagman.
May 21.....	8.29 p.m...	O'Brien Blvd., Montreal.	Que. 27577.....	Failed to stop at unprotected crossing and ran into side of passing train.
May 22.....	7.00 p.m...	King St., Sherbrooke, Que.	Que. 52761.....	Drove into gates when they were down, slightly breaking end of gate on south side.
May 23.....	12.50 p.m...	Dundas Highway No. 5, Tansley, Ont.	Ont. DT-63.....	Ran around 2 cars stopped at crossing and crossed over in front of wayfreight.
May 23.....	10.50 a.m...	Water St., Summerside, P.E.I.	.....	Ignored stop signal.
May 26.....	7.20 p.m...	Atwater Ave., Canal bank, Montreal.	Que. 28678.....	Stopped on flagman's signal and then started up again and was struck by leading car of the train.
May 27.....	7.40 p.m...	King St., Sherbrooke, Que.	Que. FP-2850...	Backed into gates when leaving gas filling station.
May 30.....	16.00 K.....	Main St., Swan River, Man.	Man. T-10359...	Drove onto crossing without looking for train.
June 1.....	1.30 a.m...	Pape Ave., Toronto, Ont.	Ont. M-6271.....	Approached crossing at excessive speed and failed to observe lowered gates.
June 4.....	.....	Main and Ferguson Ave., Hamilton, Ont.	Ont. 3052.....	Stopped foul of main line and had engineer not observed it, same would have been struck. Driver quite indifferent about the matter.
June 6.....	3.15 p.m...	Victoria St., New Glasgow, N.S.	62·089.....	Refused to stop when train was leaving station. Train had to stop.
June 9.....	10.02 a.m...	Young St., Truro, N.S...	N.S. 85-638.....	Made wrong turn and got between D.A.R. and main line tracks. Did not drive by Stop Sign but had to stop No. 3 Ocean Limited to get car out of way.
June 11.....	1.50 p.m...	Water St., Summerside, P.E.I.	P.E.I. 5646....	Backed onto crossing.
June 13.....	12.20 a.m...	Pictou crossing, Truro, N.S.	.....	Auto drove in back of gates and broke off casting and did not stop.
June 19.....	6.00 a.m...	Public highway, Ste. Genevieve, P.Q.	Que. 20655.....	Auto attempted to drive over crossing ahead of train.
June 20.....	10.45 a.m...	Queen St. West, Chaudiere, Ottawa, Ont.	Ont. C-53427....	Backing into southwest gate when not being used, damaging same.
June 20.....	3.45 p.m...	Water St., Summerside, P.E.I.	P.E.I. 3793.....	Ignored stop signal.
June 26.....	8.10 p.m...	First public crossing west, Ste. Genevieve, Que.	Que. FP-8210...	Attempted to drive over crossing ahead of train.
June 27.....	5.06 p.m...	Young St., Truro, N.S....	N.S. 51-947.....	Would not stop for signal—drove auto across in front of train.
July 4.....	1.00 p.m...	Water St., Summerside, P.E.I.	P.E.I. 1292.....	Ignored stop signal.
July 9.....	1.25 p.m...	Water St., Summerside, P.E.I.	P.E.I. 1569.....	Ignored stop signal.
July 4.....	2.05 p.m...	Water St., Summerside, P.E.I.	P.E.I. 6484.....	Ignored stop signal.
July 10.....	12.05 K.....	24th Street, Saskatoon, Sask.	Sask. T-237.....	Disregarded both stationary and watchman's signs.
July 10.....	5.16 p.m...	Young St., Truro, N.S....	N.S. 51-132.....	Would not stop for signals, drove across track in front of train.
July 11.....	11.50 p.m...	Lutz St., Moncton, N.B...	M-3957.....	Drove into gate stand breaking same.

CANADIAN NATIONAL RAILWAYS—*Continued*

Date	Time	Crossing	Licence No.	Dangerous Practices
July 13.....	9.00 a.m...	Lutz St., Moncton, N.B...	.....	Truck ran into arm of gate and broke it.
July 15.....	4.20 p.m...	St. John St., Truro, N.S..	52019.....	Auto went under gate and backed back and broke the gate.
July 15.....	9.48 a.m...	Young St., Truro, N.S....	N.S. C10–406...	Drove past stop sign.
July 23.....	11.30 p.m...	Weston Rd., Toronto, Ont.	L–9402.....	Car crashed into gates when down. Car said to be unsafe for driving.
July 24.....	10.14 a.m...	Young St., Truro, N.S....	N.S. C17–109...	Auto drove in front of switch engine while stop sign was up.
July 28.....	10.18 a.m...	Ontario St., Port Hope, Ont.	Ont. 55334–C....	Truck parked foul of track.
July 30.....	11.30 K.....	Water Ave., Winnipeg, Man.	26829.....	Auto ran through stop signal.
July 30.....	11.30 p.m...	Dundas St., London, East, Ont.	U–1518.....	Failed to heed stop signals given by yard man.
July 30.....	16 K.....	1st Ave. East, Prince Albert, Sask.	Sask. 22237.....	Failed to stop when stop signal against him.
July 30.....	17.06.....	1st Ave. East, Prince Albert, Sask.	22997.....	Drove past stop sign when engine approached crossing.
July 31.....	14.38.....	1st Ave. East, Prince Albert, Sask.	22151.....	Drove past stop sign when engine backed over crossing.
Aug. 4.....	14.55 p.m...	1st Ave. East, Prince Albert, Sask.	CV–926.....	Drove past stop sign when engine being detached from train.
Aug. 6.....	9.05 a.m...	Metcalfe St., Strathroy, Ont.	Ont. FS–591....	Auto crossed tracks less than 10 feet in front of engine.
Aug. 6.....	1.30 p.m...	Ontario St., Port Hope, Ont.	Ont. HT–482....	Drove auto across track in fro of train.
Aug. 7.....	8.00 p.m...	Pictou, Truro, N.S.....	25365.....	Auto ran through gates, breaking off one end.
Aug. 10.....	17.10 K.....	1st Ave. East, Prince Albert, Sask.	1–215.....	Drove past stop sign when train being switched into station platform.
Aug. 12.....	2.20 K.....	Highway crossing just west of Clavet, Sask.	Sask. 11–521....	Drove into side of train, 21 cars ahead of caboose.
Aug. 12.....	11.00 K.....	Sixth St., Brandon, Man..	T–8–482.....	Ignored stop signal when train almost at the crossing.
Aug. 14.....	12.05 p.m...	Water St., Summerside, P.E.I.	P.E.I. 4805.....	Ignored stop signal.
Aug. 18.....	12.05.....	24th St., Saskatoon, Sask.	Sask. 12660.....	Disregarded both stationary and watchman's signals, action was very deliberate.
Aug. 21.....	7.45 p.m...	Montreuil Rd., Walkerville, Ont.	Ont. V–2988.....	Ran through crossing when signalled to stop.
Aug. 21.....	4.50 p.m...	St. George St., Moncton, N.B.	M–6011.....	Did not stop when gates were coming down.
Aug. 25.....	11.50 a.m...	Laframboise St., St. Hyacinthe, P.E.I.	58013.....	Passed under stop while train was coming through.
Aug. 27.....	10.00 K.....	Public crossing at north switch, Ebenezer, Sask.	Sask. 26–516....	Approached crossing without ascertaining if train was approaching.
Aug. 28.....	21.40.....	Public crossing, Mile 120.1, Coronado Subdivision, Edmonton. Alta.	Alta. B 1–214...	Driver saw that he could not get over crossing and ran into right side of engine.
Aug. 29.....	15.50 K.....	Public crossing, 12 poles west of MP. 113, Asquith Subd.	.....	Drove onto crossing in front of approaching train, rear of wagon being struck by train.
Sept. 2.....	11.55.....	Private crossing 50 feet east of Hubbard station, Hubbard, Sask.	.....	Approaching private crossing without ascertaining whether or not train was approaching.
Sept. 5.....	11.30 p.m...	Lutz St., Moncton, N.B..	CM-418.....	
Sept. 9.....	1.05 a.m...	St. Dominique St., Jonquiere, P.Q.	Que. F-2245.....	Drove auto truck over track ahead of train.
Sept. 7.....	11.55 a.m...	Water St., Summerside, P.E.I.	P.E.I. 6279.....	Ignored stop signal.
Sept. 10.....	15.45.....	Public crossing M.P. 12·5 Brazeau Subd., Calgary, Alta.	Alta. 61358.....	Struck track motor car on crossing as result of auto driver losing control of car.
Sept. 12.....	14.45 p.m...	1st Ave. East, Prince2 Albert, Sask.	2·272.....	Drove car onto crossing failing to either see train or stop sign.
Sept. 12.....	10.45 p.m...	Cannon St., Hamilton, Ont.	Ont. R-1238.....	Passed cars which had been stopped by the watchman at crossing nearly running over watchman and going over track in front of train.

CANADIAN NATIONAL RAILWAYS—*Concluded*

Date	Time	Crossing	Licence No.	Dangerous Practices
Sept. 26	15.40	Sixth St., Brandon, Man.	52320	Drove auto over crossing when stop sign against it—light engine only forty feet away.
Oct. 1		Public crossing Darlington St., Yorkton yard, Yorkton, Sask.	Sask. 65627	Approaching public crossing without ascertaining whether or not train was approaching.
Oct. 2	10.47 p.m.	Public road crossing, mileage 12·5, Bala Subd.	Ont. J-72	Ran into auto standing at crossing pushing it into side of train, passing over crossing striking 29th car from engine.
Oct. 3		Mill St., Saint John, N.B.		Breaking tip off south gate.
Oct. 5	11.50 a.m.	Sydney, N.S.	1547	Ran into east gates breaking arms.
Oct. 6	11.45 a.m.	Dundas St. crossing transfer track, London, Ont.	Ont. MU-352	Driving at excessive speed, barely stopped before reaching tracks, and narrowly escaped striking flagman.
Oct. 7	1.35 p.m.	Water St., Summerside, P.E.I.		Ignored stop signal.
Oct. 9	3.55 p.m.	Kipling Avenue, Mimico, Ont.	Ont. ND-792	Auto driver disregarded flagman's signal.
Oct. 9	16.22 p.m.	1st Ave. East, Prince Albert, Sask.	22079	Drove past stop sign when engine switching over crossing.
Oct. 11		Public crossing 10 poles east M.P. 98, Miniota Sub. near Yarbo, Sask.	Sask. 79013	Drove onto crossing in face of train without ascertaining whether or not train was approaching.
Oct. 13	6.00 p.m.	St. John St., Truro, N.S.		Drove too close to gates while up and struck casting, scaring horse which ran away.
Oct. 10	12.05	Sixth St., Brandon, Man.	T-8-457	Ignored stop signal when engine almost at crossing.
Oct. 17	18.30	Main St., Vegreville, Edmonton, Alta.	Alta 53989	While conductor standing on middle of crossing flagging car ran into side of train.
Oct. 19	11.25 a.m.	St. Andrews Rd., Cornwall, Ont.	Ont. 34121-C	Ran into and damaged crossing gates.
Oct. 24	6.25 a.m.	Mill St., Saint John, N.B.	CJ-7127	Did not see the gate, breaking north gate on west side.
Oct. 30	11.46 a.m.	Water St., Summerside, P.E.I.	P.E.I. 2370	Ignored stop signal.

CANADIAN PACIFIC RAILWAY (Eastern Lines)

New Brunswick District

Date	Time	Crossing	Licence No.	Dangerous Practices
April 17	8.00 a.m.	Douglas Ave., Saint John, N.B.	CJ-203	Drove under gate when same was being lowered. Warning bell ringing.
April 30	1.35 p.m.	Douglas Ave., Saint John, N.B.	S-1612	Drove under gates when same were being lowered. Warning bell ringing.
May 2	11.30 a.m.	Main St., Fairville, N.B.	J-3768	Had to call attention of driver to the gates. Warning bell ringing.
May 30	9.30 a.m.	Douglas Ave., Saint John, N.B.	CJ-120	Drove under west gate driving very fast and carelessly. Warning bell ringing.
June 27	7.00 a.m.	Main St., Fairville, N.B.	J-1741	Drove under gates.
July 17	11.30 a.m.	Main St., Fairville, N.B.	J-4218	Car went under gates while being lowered. Warning bell ringing.

CANADIAN PACIFIC RAILWAY (EASTERN LINES)—*Continued*

NEW BRUNSWICK DISTRICT—*Concluded*

Date	Time	Crossing	Licence No.	Dangerous Practices
July 27.....	1.30 p.m...	Main St., Fairville, N.B..	J-4218.....	Same car as above. Went under gates while being lowered. Brakes poor. Warning bell ringing.
July 29.....	1.10 p.m...	Douglas Ave., Saint John, N.B.	P.C. 769.....	Truck went under gates while being lowered. Warning bell ringing.
Aug. 7.....	8.00 a.m...	Main St., Fairville, N.B..	J-7144.....	Car went under gates. Gateman called to driver but would not stop. Warning bell ringing.
Aug. 9.....	10.00 a.m...	Main St., Fairville, N.B..	N.S.-81411.....	Car went under gates, stopped on crossing then backed up. Warning bell ringing.
Sept. 1.....	7.15 a.m...	Douglas Ave., Saint John, N.B.	C.J. 885.....	Truck went under gate while being lowered, striking west gate. Warning bell ringing.
Sept. 3.....	7.00 a.m...	Main St., Fairville, N.B..	J-6899.....	Car went under gates when nearly down, stopped on crossing then started again.
Sept. 13.....	2.40 p.m...	Main St., Fairville, N.B..	F-3288, PK-496, J-7014 and J-7181.	Gateman had to call to drivers to have them stop in order to get gates down. Warning bell ringing.

QUEBEC DISTRICT

April 16.....	.....	Hastings St., St. Johnsbury.	Vt. 7648.....	Auto drove south over crossing with wigwag signal working.
April 16.....	6.55 p.m...	Rockland Ave., Outremont	Que. L-6124.....	Truck stopped at south side but started over crossing before gate was fully raised, causing cab of truck to strike arm of gate which was slightly damaged.
June 18.....	.....	Montcalm St., Hull West.	Que. 56972.....	Ran into north west gate, breaking about six feet off end.
June 22.....	6.47 p.m...	Elmhurst Ave., Montreal.	Que. 10324.....	Four autos approaching crossing from south stopped, but the fifth auto failed to stop and passed the other cars and ran through south east gate breaking arms of gate barrier.
July 10.....	.....	Lake Shore Rd., Vaudreuil.	F-3608.....	Driver drove truck through south gate arm, breaking same.
July 10.....	6.20 a.m...	Gouin Blvd., Bordeaux...	B-8122.....	Motor truck approached crossing from east and failed to stop until it struck arm of southeast gate, which was broken.
Aug. 27.....	12.03 a.m...	Rockland Ave., Outremont.	Que. 27442.....	Automobile, moving from north to south, failed to stop and broke gate barrier on north side.

ONTARIO DISTRICT

April 2.....	2.45 a.m...	Dufferin St., Toronto.....	E-2345.....	Automobile ran into and damaged gate.
April 19.....	9.45 p.m...	Front St., and Spadina Ave., Toronto.	NC-803.....	Automobile struck and damaged weights on No. 5 gate stand, causing gate to fall to ground, breaking point and barrier.
April 28.....	2.45 p.m...	Symington Ave., Toronto.	E-2272.....	Automobile ran into gate, breakiron prop on gate arm.
May 9.....	10.15 p.m...	Queen St., Chatham.....	U-9576.....	Automobile ran through both gate arms when lowered breaking same.
May 14.....	6.15 a.m...	Queen St., Chatham.....	U-6349.....	Automobile ran into southwest gate arm. Bell ringing.

CANADIAN PACIFIC RAILWAY (Eastern Lines)-*Concluded*

Ontario District—*Concluded*

Date	Time	Crossing	Licence No.	Dangerous Practices
May 20.....	1.40 a.m...	Queen St., Chatham.....	.....	While gates were being lowered, automobile crashed through breaking gate arm. Bell ringing.
May 20.....	6.50 a.m...	Dundas St., Islington.....	O-142.....	Automobile driven over crossing in front of train.
May 29.....	7.05 p.m...	MacLennan Ave., Toronto	F-1004.....	While gates being lowered automobile was driven through north gate and continued without stopping.
June 1.....	11.35 a.m...	Richmond St., London...	T-6088.....	Automobile disregarded watchman's stop sign and crossed tracks in front of yard engine.
June 1.....	6.40 p.m...	John St., Toronto.....	69796-C.....	Motor truck backed into northwest crossing gate, breaking point of gate.
June 5.....	8.30 p.m...	Quebec St., London.....	D-1649.....	Driver disregarded stop signals and crossed tracks on wrong side of street in front of passenger train.
June 11.....	6.20 p.m...	Front St., and Spadina Ave., Toronto.	K-2993.....	Automobile stopped at east gates and then drove through between points of gates and under gate at entrance to gasoline station.
July 15.....	7.15 a.m...	Dufferin St., Toronto.....	72264-C.....	Truck driven around automobile which had stopped at crossing and struck gate arm, breaking point of gate.
July 23.....	3.30 p.m...	Osler Ave., Toronto.....	11099-C.....	Truck struck north gate, damaging gate arm.
Sept. 5.....	8.45 a.m...	Front St., and Spadina Ave., Toronto.	1305-C.....	T.T.C. bus driven north over Spadina Ave. bridge and in turning east on to Front St., caught the barrier and broke the axle on east half of No. 2 gate.
Sept. 24.....	10.05 p.m...	Richmond St., London...	.....	Auto going north did not stop but drove through both gates, which were down, breaking north gate arm.

Algoma District

June 30.....	11.00 p.m...	Elm St., Sudbury.....	Y-5552.....	Automobile ran into and broke southwest gate, when brakes on car failed.
Aug. 31.....	11.15 p.m...	Elm St., Sudbury.....	LL-327.....	Speeding auto ran into lowered gates, breaking southeast gate.

CANADIAN PACIFIC RAILWAY (Western Lines)

Saskatchewan District

April 4.....	15.10.....	Broadway, Yorkton.....	685.....	Regardless of stop singal crossed in front of engine.
April 6.....	8.15.....	Ave. A., Saskatoon.....	U.T. 224.....	Regardless of stop signal crossed in front of engine.
April 9.....	16.55.....	Broadway, Yorkton.....	21–639.....	Regardless of stop signal crossed in front of engine.
April 10.....	12.23.....	Ave. A., Saskatoon.....	T–401.....	Regardless of stop signal crossed in front of engine.
April 13.....	14.40.....	Broadway, Yorkton.....	26–130.....	Regardless of stop signal crossed in front of engine.
April 14.....	19.20.....	Broadway, Yorkton.....	20–057.....	Stopped for signal and then started up and crossed in front of engine.

CANADIAN PACIFIC RAILWAY (WESTERN LINES)—*Continued*

SASKATCHEWAN DISTRICT—*Continued*

Date	Time	Crossing	Licence No.	Dangerous Practices
April 21	17.10	Broadway, Yorkton	26–257	Regardless of stop signal crossed in front of engine.
April 27	9.18	Elphinstone St., Regina	7–275	Moved over crossing when bell ringing.
April 27	8.45	Winnipeg St., Regina	44–934	Moved over crossing when bell ringing.
April 29	11.23	Winnipeg St., Regina	20637, 5–567. Wagon	Moved over crossing when bell ringing.
April 30	8.50	Winnipeg St., Regina	4–377 & Wagon	Moved over crossing when bell ringing.
April 30	18.15	Broadway, Yorkton	27–313	Stopped for signal and then started up again and just got across in front of engine.
May 1	16.30	Broadway, Yorkton	40–251	Regardless of stop signal crossed in front of engine.
May 1	8.50	Winnipeg St., Regina	T–430 and T–650	Regardless of stop signal crossed in front of engine.
May 2	16.15	Broadway, Yorkton	D–338	Regardless of stop signal crossed in front of engine.
May 2	13.25	Winnipeg St., Regina	One wagon	Regardless of stop signal crossed in front of engine.
May 4	8.50	Winnipeg St., Regina	482, CW–247, 254 and 2 wagons.	Regardless of stop signal crossed in front of engine.
May 6	8.50	Winnipeg St., Regina	2–545, 3–486, 1–778, 679, T–718 482, 686.	Regardless of stop signal crossed in front of engine.
May 11	8.50	Winnipeg St., Regina	4–349, 334 and 805.	Regardless of stop signal crossed in front of engine.
May 12	8.48	Winnipeg St., Regina	T–803, T–598, 3–486.	Regardless of stop signal crossed in front of engine.
May 13	11.25	Winnipeg St., Regina	FV–167	Moved over crossing when bell was ringing.
May 14	8.50	Winnipeg St., Regina	740, D–72, 6–276.	Moved over crossing when bell was ringing.
May 16	8.55	Winnipeg St., Regina	3508	Moved over crossing when bell was ringing.
May 18	8.50	Winnipeg St., Regina	4–063, 1–277, 969, 49, 44–924, 297 and T–669.	Moved over crossing when bell was ringing.
May 19	8.50	Winnipeg St., Regina	3–094, 58–982	Moved over crossing when bell was ringing.
May 21	8.51	Winnipeg St., Regina	3–486, 6–248	Moved over crossing when bell was ringing.
May 22	8.50	Winnipeg St., Regina	44–853, 4–217, 8–986, 498 and 8–581.	Moved over crossing when bell was ringing.
May 23	8.50	Winnipeg St., Regina	CV–243, 44–733, T–620, 2–557, 3–523 and T–673.	Moved over crossing when bell was ringing.
May 25	8.52	Winnipeg St., Regina	36–690, 11–853, 3–559.	Moved over crossing when bell was ringing.
May 25	17.35	Broadway, Yorkton	D–338	Stopped for signal, started up and crossed in front of engine.
May 27	8.50	Winnipeg St., Regina	T–485, T–500, 1 wagon.	Moved over crossing when bell was ringing.
May 28	14.20	Broadway, Yorkton	3–906	Regardless of stop signal crossed in front of engine.
May 29	16.20	Winnipeg St., Regina	1 wagon	Moved over crossing when bell was ringing.
May 30	11.24	Winnipeg St., Regina	T–638	Moved over crossing when bell was ringing.
May 30	18.55	Broadway, Yorkton	29–404	Regardless of stop signal crossed in front of engine.
June 5	15.20	Broadway, Yorkton	16–257	Regardless of stop signal crossed in front of engine.
June 18	16·15	Broadway, Yorkton	1231	Regardless of stop signal crossed in front of engine.
June 18	16.20	Broadway, Yorkton	27–186	Regardless of stop signal crossed in front of engine.
June 18	13.50	Broadway, Yorkton	64–583	Regardless of stop signal crossed in front of engine.

CANADIAN PACIFIC RAILWAY (WESTERN LINES)—*Continued*

SASKATCHEWAN DISTRICT—*Continued*

Date	Time	Crossing	Licence No.	Dangerous Practices
June 19	15.55	Broadway, Yorkton	D-279	Stopped for signal at fast speed, watchman having to jump out of way. Crossed about 30 feet ahead of train.
June 19	17.50	Broadway, Yorkton	26-689	Regardless of stop signal, crossed in front of engine.
July 2		Winnipeg St., Regina	50-936, 2-989, FV-309, 4-432, 43-194.	Auto moved over crossing when bell was ringing.
July 3		Winnipeg St., Regina	49-654	Auto moved over crossing when bell was ringing.
July 4		Winnipeg St., Regina	3-595, U.F. 248	Auto moved over crossing when bell was ringing.
July 4	16.40 K	Broadway, Yorkton	27-146	Regardless of stop signal drove across in front of engine.
July 7		Winnipeg St., Regina	7-596, T-598	Regardless of stop signal drove across in front of engine.
July 9		Winnipeg St., Regina	311	Auto moved over crossing when bell was ringing.
July 11		Winnipeg St., Regina	9-057, 73-709	Auto moved over crossing when bell was ringing.
July 13		Winnipeg St., Regina	5-431, 55-205	Auto moved over crossing when bell was ringing.
July 15		Winnipeg St., Regina	C.F. -115	Auto moved over crossing when bell was ringing.
July 18		Winnipeg St., Regina	7-614	Auto moved over crossing when bell was ringing.
July 24	20.00 K	Broadway, Yorkton	26-462	Regardless of stop signal drove across in front of engine.
July 25	19.40 K	Broadway, Yorkton	26-913	Regardless of stop signal drove across in front of engine.
July 31		Winnipeg St., Regina	3-772, 3-872, F.V. 225·3.	Auto moved over crossing when bell was ringing.
Aug. 4		Winnipeg St., Regina	FV-164, CV-2061, 49-654, T-1302.	Auto moved over crossing when bell was ringing.
Aug. 5	19.30 K	Broadway, Yorkton	26-902	Regardless of stop signal drove across in front of engine.
Aug. 6	19.25 K	Broadway, Yorkton	T-110	Regardless of stop signal drove across in front of engine.
Aug. 7	17.10 K	Broadway, Yorkton	69-391	Regardless of stop signal drove across in front of engine.
Aug. 7	17.40 K	Broadway, Yorkton	26-338	Regardless of stop signal drove across in front of engine.
Aug. 8		Winnipeg St., Regina	944, 74-012, T-129.	Auto moved over crossing when bell was ringing.
Aug. 9		Winnipeg St., Regina	70, 2-522, 418	Auto moved over crossing when bell was ringing.
Aug. 10		Winnipeg St., Regina	CV-791, CV-722	Auto moved over crossing when bell was ringing.
Aug. 10	15.55 K	Broadway, Yorkton	26-792	Regardless of stop signal drove across in front of engine.
Aug. 11	16.55 K	Broadway, Yorkton	26-289	Regardless of stop signal drove across in front of engine.
Aug. 12	16.05 K	Broadway, Yorkton	27-181	Regardless of stop signal drove across in front of engine.
Aug. 12	19.25 K	Broadway, Yorkton	T-145	Regardless of stop signal drove across in front of engine.
Aug. 15	15.30 K	Broadway, Yorkton	34-517	Regardless of stop signal drove across in front of engine.
Aug. 15	16.30 K	Broadway, Yorkton	27-828	Regardless of stop signal drove across in front of engine.
Aug. 18	19.25 K	Broadway, Yorkton	44-161	Regardless of stop signal drove across in front of engine.
Aug. 19	17.50 K	Broadway, Yorkton	27-070	Regardless of stop signal drove across in front of engine.
Aug. 19	19.45 K	Broadway, Yorkton	27-040	Regardless of stop signal drove in front of engine.
Aug. 20	17.15 K	Broadway, Yorkton	CV-1156	Regardless of stop signal drove in front of engine.
Aug. 20	17.20 K	Broadway, Yorkton	26-132	Regardless of stop signal drove in front of engine.
Aug. 20	18.00 K	Broadway, Yorkton	52-838	Regardless of stop signal drove in front of engine.

CANADIAN PACIFIC RAILWAY (WESTERN LINES)—*Concluded*

SASKATCHEWAN DISTRICT—*Concluded*

Date	Time	Crossing	Licence No.	Dangerous Practices
Aug. 20	19.25 K	Broadway, Yorkton	14-537	Regardless of stop signal drove in front of engine.
Aug. 21	13.25 K	Broadway, Yorkton	CV-679	Regardless of stop signal drove in front of engine.
Aug. 22,	15.45 K	Broadway, Yorkton	L-338	Regardless of stop signal drove in front of engine.
Aug. 22	18.10 K	Broadway, Yorkton	27-883	Regardless of stop signal drove in front of engine.
Aug. 22	18.50 K	Broadway, Yorkton	70-126	Regardless of stop signal drove in front of engine.
Aug. 22		Winnipeg St., Regina	3-657, CV-265, T-924.	Auto moved over crossing when bell was ringing.
Aug. 24		Winnipeg St., Regina	5-588, 4-052, 70-817, FV-253, 4-436, CV-271, Fire Chief. 1 wagon.	Auto moved over crossing when bell was ringing.
Aug. 24	17.10 K	Broadway, Yorkton	76-062	Regardless of stop signal drove in front of engine.
Aug. 27	20.30 K	Broadway, Yorkton	27-995	Regardless of stop signal drove in front of engine.
Aug. 27	17.55 K	Broadway, Yorkton	70-878	Regardless of stop signal drove in front of engine.
Aug. 27	16.50 K	Broadway, Yorkton	27-648	Regardless of stop signal drove in front of engine.
Aug. 27	19.30 K	Broadway, Yorkton	26-236	Regardless of stop signal drove in front of engine.
Aug. 27	18.06 K	Broadway, Yorkton	26-250	Regardless of stop signal drove in front of engine.
Aug. 29	17.10 K	Broadway, Yorkton	8-244	Regardless of stop signal drove across in front of engine.
Sept. 2	8.50 K	Winnipeg St., Regina	498, 3-833	Auto moved over crossing when bell was ringing.
Sept. 5	8.25 K	Winnipeg St., Regina	60-890	Auto moved over crossing when bell was ringing.
Sept. 6	14.30 K	Broadway, Yorkton	27-934	Regardless of stop signal drove across in front of engine.
Sept. 8	7.45 K	Winnipeg St., Regina	3-876, 3-665, CV-168, 49-819, 2-862, CV-2179	Auto moved over crossing when bell was ringing.
Sept. 10	7.58 K	Winnipeg St., Regina	L-178	Auto moved over crossing when bell was ringing.
Sept. 11	17.45 K	Broadway, Yorkton	T1-433	Regardless of stop signal—drove across in front of engine.
Sept. 11	17.50 K	Broadway, Yorkton	L-001	Regardless of stop signal—drove across in front of engine.
Sept. 12	19.10 K	Broadway, Yorkton	26-750	Regardless of stop signal—drove across in front of engine.
Sept. 12	19.12 K	Broadway, Yorkton	69-401	Regardless of stop signal—drove across in front of engine.
Sept. 12	20.10 K	Broadway, Yorkton	34-589	Regardless of stop signal—drove across in front of engine.
Sept. 19	18.10 K	Broadway, Yorkton	27-603	Regardless of stop signal—drove across in front of engine.
Sept. 20	10.00 K	Broadway, Yorkton	T-1166	Regardless of stop signal—drove across in front of engine.
Sept. 23	11.23 K	Winnipeg St., Regina	T-817	Auto moved over crossing when bell was ringing.
Sept. 26	16.40 K	Broadway, Yorkton	27-088	Regardless of stop signal—drove across in front of engine.
Sept. 24	7.05 K	Ave. A., Saskatoon	T-1244	Regardless of stop signal—drove across in front of engine.

ALBERTA DISTRICT

May 5	12.15 K	4th St. W., Calgary	Alta. 14272	Ran into gates which were down and broke two arms.
Aug. 8	15.30 K	4th St. W., Calgary	Alta. 34148	Auto was driven against gate which was down, breaking one arm of gate.

STATEMENT OF MISHAPS AT PRIVATE CROSSINGS, WHERE NO PERSONAL INJURY IS INVOLVED, PERIOD FROM JANUARY 1, TO JUNE 30, 1936

Division	Date	Location	Particulars
MANITOBA DISTRICT—			
Kenora	Jan. 18	Oxdrift, Ont., Mileage 69·81, Ignace Subd.	Team and sleigh at spur track loading and hauling timber became frightened and bolted, ran in front of train on crossing. Both horses were killed.
	Mar. 19	Brinkman Rd., crossing over Kenora Paper Mills, Kenora.	Truck collided with side of train.
Portage	Feb. 15	7 poles north of mileage 27, Winnipeg Beach Subd.	Motor truck ran into side of engine.
	Mar. 12	Mileage 11·91, Glenboro Sub.	Truck struck by train.
	April 22	Horndean, Mileage 59·5, La Riviere Sub.	Automobile ran into side of engine.
	May 1	Mileage 11·91, Glenboro Sub.	Truck struck by train.
	May 18	First public crossing, Neche N.D. (G.N. Rly.).	Engine backed into Ford truck.
ALBERTA DISTRICT—			
Medicine Hat	Feb. 13	Willow Creek	Engine struck Ford truck.
	Feb. 17	Retlaw	Truck ran into left side of engine.
Lethbridge	Feb. 3	Taber Sub. M. 47·8	Truck drove onto crossing just ahead of engine.
	Mar. 9	Turin Sub. M. 13·03	Truck ran into side of engine.
Calgary	June 3	8th St. E	Auto attempted to go over crossing, after westbound train cleared and was pushed clear by eastbound yard engine.
Edmonton	Feb. 24	M. 170 Willingdon Sub	Ford sedan skidded into right side of engine.
	Mar. 31	1½ miles north of Kavanagh, Leduc Subd.	Truck stalled close to track, resulting in grab iron of baggage car engaging truck and being pulled off.
BRITISH COLUMBIA DISTRICT—			
Kootenay	April 2	Mile 18·8, Boundary Sub., East of Thrums.	Plough of engine struck truck a glancing blow on right fender.
	April 10	Near Tadanac. Rossland Sub.	Auto struck by engine.

SUMMARY OF DANGEROUS PRACTICES

—	Number	Per cent
Drove into lowered crossing gates	25	7·8
Drove into side of train	6	1·9
Ignored stop signal	12	3·8
Struck by train	17	5·3
Backed into crossing gates	3	0·9
Drove onto crossing without ascertaining if train approaching	5	1·5
Approached crossing at excessive speed	3	0·9
Stopped foul of track	1	0·3
Refused to stop when train leaving station	1	0·3
Car caught between tracks	1	0·3
Backed onto crossing	2	0·6
Attempted to drive over crossing ahead of train	5	1·5
Drove onto track in front of train	12	3·4
Disregarded watchman's signal	7	2·2
Drove into gate stand or gate arm	6	1·9
Drove under gates	2	0·6
Drove past stop sign	9	2·8
Ran into track motor	1	0·3
Drove onto crossing failing to see train or stop sign	1	0·3
Drove under gates as they were being lowered	13	4·5
Started over crossing before gates raised	1	0·3
Regardless of stop signal, crossed in front of engine	57	17·8
Crossed over crossing when bell ringing or wigwag working	131	40·8
	321	100·00

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXVI | Ottawa, December 1, 1936 | No. 19

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Complaint on behalf of Cairns Bros., re *condition of fences on the Millbrook Junction-Omemee Section of the Canadian National Railways abandoned under P.C. Order No. 1209, dated June 24, 1927.*

File No. 34903

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER:

This is an application of Cairns Bros. for an order to compel the Canadian National Railways to erect fences along certain portions of their line of railway between Millbrook Junction and Omemee, in the province of Ontario, where the same passes through the lands of applicants, and which said line of railway, about 12 miles in length, was abandoned by the railway company pursuant to order of the Board of Railway Commissioners for Canada, No. 39041, dated May 17, 1927, which said order was approved by His Excellency the Governor General in Council on June 24, 1927. After the approval of the said order by His Excellency the Governor General in Council as aforesaid, the Canadian National Railways abandoned the operation of the said 12 miles of railway. The road has since been dismantled by the removal of rails, ties, etc., and much of the fencing, if not all, upon both sides of the right of way throughout the whole distance where it crosses the applicants' property has been removed or destroyed, or is so greatly out of repair as to be of no value for protection as fencing.

After the abandonment of the line of railway, the railway company erected fences or barriers at each end of the abandoned right of way, but these erections have from time to time been destroyed or have fallen out of repair, and the public has used the right of way to some extent as an ordinary road for travel. As a consequence of the lack of fencing the applicants claim that they have been seriously damaged in respect of their farm which lies upon both sides of the railway right of way. They complain that trespassers and cattle get upon their property from time to time from the railway right of way and that there are no fences upon the right of way to prevent their so doing, and that under present circumstances they have suffered a great deal of damage and inconvenience in respect of their farm property and farm operations.

The application was heard in the city of Toronto on November 3, 1936, in the presence of the applicants and their counsel, and also in the presence of counsel for the railway company. At the conclusion of the hearing it was suggested that the railway company might at slight expense erect permanent

barriers at each end of its abandoned line of railway where it crosses applicants' property, which would effectually stop trespassing and travel upon its former railway line in the vicinity of applicants' farm. Counsel for the railway company agreed to this suggestion and stated that the railway company would be willing to erect suitable barriers for such purpose at the above points, and would also erect and maintain proper signs or notices warning persons against trespassing and that the railway company would endeavour in any reasonable way to prosecute trespassers should the practice continue.

It is to be noted that the requirement for fencing is that the company shall erect and maintain fences *upon the railway* (section 274 of the Railway Act). Where abandonment of operation has been authorized and has taken place, the right of way through which the railway is operated ceases to be used for railway purposes and is held by the company, not as part of its *railway* qua railway company, but in the same way as land is held by private individuals, subject to any provincial or municipal laws in respect of fencing which may be in force in the particular district.

It is to be further noted that the principal, if not the sole, reason for the fencing requirement in the Railway Act is to prevent cattle from getting upon railway lands and being killed or injured by railway operation. Where complete abandonment of a line of railway takes place, the necessity for fencing the line largely disappears, and the section does not apply. For these reasons the Board, in my opinion, has no authority under the terms of the Railway Act to order the railway company to maintain fences upon the sides of its right of way under the circumstances which pertain in the present application. It is, of course, open to the applicants, if they so desire, to seek whatever remedy in respect of fencing may be available under the provisions of the provincial laws.

When it was pointed out to the applicants at the hearing that the Board lacked jurisdiction to make an order such as the applicants desired, they were disposed to accept the suggestion above set out in regard to the erection of barriers by the railway company at each end of the abandoned right of way, where the same crosses the farm property of applicants. It may be that under all the circumstances it would be better to erect these barriers at the points where the right of way intersects the highways nearest to the property of the applicants. The erection of barriers at the highway intersections might effectually put a stop to the trespassing of which the applicants complain.

An order will, therefore, be issued in the above terms providing for the erection and maintenance of the said barriers and the notices to trespassers as above mentioned.

Ottawa, November 7, 1936.

The Assistant Chief Commissioner and Commissioner Stone concurred.

ORDER No. 53687

In the matter of the complaint of Moore & Jordan of Lindsay, Ontario, on behalf of Cairns Brothers, against the condition of fences on that portion of the Canadian National Railways' Bethany Subdivision between Millbrook Junction and Omemee Junction, in the province of Ontario, abandoned under Order No. 39041, dated May 17, 1927, and Order in Council P.C. 1209, dated June 24, 1927.

File No. 34903

THURSDAY, the 12th day of November, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Toronto, November 3, 1936, in the presence of counsel for the said Cairns Brothers and the Canadian National Railways, and what was alleged,—

It is ordered: That the Canadian National Railways be, and they are hereby, required forthwith to erect and maintain permanent barriers at each end of their right of way on the Bethany subdivision, abandoned as aforesaid, at the points where such right of way intersects the highways nearest to the property of the applicants; and also to erect and maintain proper signs or notices warning persons against trespassing.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53651

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for permission to file on one day's notice a supplement to Tariff C.R.C. No. E-1807, to correct a clerical error.

File No. 27612.144

WEDNESDAY, the 4th day of November, A.D. 1936.

S. J. MCLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon its appearing that, through clerical error, a rate of 35 cents per 100 pounds on copper was published from Clara Belle and Copper Cliff, Ontario, to Montreal, Sorel, and Quebec, Quebec, for export, in Supplement No. 91 to Tariff C.R.C. No. E-1807,—

It is ordered: That the applicants be, and they are hereby, granted leave to issue and file, on one day's notice, a supplement to the said Tariff C.R.C. No. E-1807 correcting the said rate so as to make it 25 cents per 100 pounds instead of 35 cents.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 53675

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and the Order of the Board No. 53507, dated October 1, 1936, approving joint tolls published in Supplement No. 6 to Tariff C.R.C. No. E-1543 filed by the Canadian National Railways.

File No. 34822.2

WEDNESDAY, the 4th day of November, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon its appearing that the proportion of the tariff rate to Grand Falls, N.B., of 8 cents per 100 pounds, shown in Clause 1 of the said Order No. 53507, exceeds the local rate of 7 cents per 100 pounds,—

It is ordered: That the said Order No. 53507, dated October 1, 1936, be, and it is hereby, amended by striking out the figure "8" after the words "Grand Falls, N.B.", in paragraph 1 of the order, and substituting therefor the figure "7"; and by striking out the figures "10" after the words "Grand Falls, N.B.", in paragraph 2 of the order, and substituting therefor the figures "8½".

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53676

In the matter of the applicatoin of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under section 342 of the Railway Act, for relief from posting certain tariffs at stations at which the population is over 1,000 and not over 2,000, and at stations at which the population is over 2,000 and not over 10,000.

File No. 39362

THURSDAY, the 5th day of November, A.D. 1936.

S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Assistant Chief Traffic Officer of the Board,—
It is ordered and declared:

1. That the applicant company be, and it is hereby, relieved from posting tariffs to the following extent, namely:—

(*a*) That at stations where the population is over 1,000 and not over 2,000 only the Canadian Freight Classification, Standard and Local Specific Class Tariffs, and any other tariffs for which there is frequent use, be posted; and that other tariffs for the use of agents at such stations be posted in the office of the Division Freight Agent in charge of that territory; and

(*b*) That at stations at which the population is over 2,000 and not over 10,000 tariffs that are never used need not be posted.

2. That if it is found by certain agents that tariffs required for occasional or isolated shipments are not posted, the required information can be secured by them by telegraph from the Division Freight Agents in charge of the district.

3. That, in the event of any tariff not on file at a station being required on account of frequent movement, or if any shipper requests that a tariff be posted at a particular station, such tariff shall immediately be placed on file at that station.

4. That this order is subject to amendments or revision in the event of such action appearing necessary in the public interest.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 53683

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

SATURDAY, the 7th day of November, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the joint toll published in item 80-E of Supplement No. 34 to Tariff C.R.C. No. E-1504, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of the said section 3; the Canadian Pacific Railway Company's proportion to be reported at 15 cents per 100 pounds.

2. And the Board hereby certifies that the Canadian Pacific Railway Company's proportion of the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 34 to Tariff C.R.C. No. E-1504, approved herein, is 19 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53706

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 18th day of November, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 87 of Supplement No. 4 to Tariff C.R.C. No. 986, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to be reported at 5·5 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item 87 in Supplement No. 4 to Tariff C.R.C. No. 986, is 6·5 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner

ORDER No. 53707

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 18th day of November, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in items 371, 389, and 462 of Supplement No. 5 to Tariff C.R.C. No. 1006, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said items 371, 389, and 462 of Supplement No. 5 to Tariff C.R.C. No. 1006, approved herein, are as follows:—

Item		Cents per 100 pounds
371	in lots under 15,000 lbs..	34
	in lots over 15,000 lbs..	28
389	.. ..	19
462	.. ..	16½

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53708

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

THURSDAY, the 19th day of November, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Supplement No. 1 to Tariff C.R.C. No. 743, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Temiscouata Railway Company's proportion to be reported at 6 cents per 100 pounds.

2. And the Board hereby certifies that the Temiscouata Railway Company's proportion of the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 1 to Tariff C.R.C. No. 743, approved herein, is 7½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53709

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

WEDNESDAY, the 18th day of November, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 750, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 750, approved herein, is 3½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53710

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 19th day of November, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 5 to Tariff C.R.C. No. E-4308, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 5 to Tariff C.R.C. No. E-4308, approved herein, are as follows:—

> From and to Fredericton and Grand Lake Coal and Railway and the New Brunswick Coal & Railway, the rates published in Fredericton & Grand Lake Coal and Railway Tariff C.R.C. No. 152.

The 3rd class normal rate for Rate Basis No. 62 is 58 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53711

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 19th day of November, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. E-4789, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. E-4789, approved herein, are those in Canadian Pacific Railway Tariff C.R.C. No. E-4087, Mileage Tariff Basis No. 1.

H. GUTHRIE,
Chief Commissioner.

ACCIDENTS EPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR SEPTEMBER, 1936

Railway accidents	239,	with 23 killed	and 273 injured.
Railway accidents at highway crossings	30,	with 13 killed	and 44 injured.
	269	36	317

	Killed	Injured
Passengers		47
Employees	10	196
Others	26	74
	36	317

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

NOVA SCOTIA

No. of Accidents	
1	Automobile—Ran into side of train. Licence N.S. 32-481.

NEW BRUNSWICK

1	Auto truck—Drove onto crossing in front of train and was struck. Licence N.B. CJ-605

QUEBEC

3	Automobile—Failed to stop for crossing. Licences Que. 37975; 68229; 64800.
2	Auto truck—Failed to stop for crossing. Licences Que. F-15392; F-10743.
1	Automobile—Stalled on crossing. Licence Que. 23505.
1	Automobile—Licence Que. H-34487.

ONTARIO

5	Automobile—Drove onto crossing in front of train. Licences, Ont. HL-916 (Hugh Grant, Cresswell); Ont. LH-766 (L. Docksteader, Parry Sound); Ont. HM-966 (A. Poque, Omemee); Ont. CR-218 (Chas. Want, 169 St. Clair St., Point Edward); Ont. V-1484 (Z. Allard, no address given).

3 Automobile—Auto ran into side of train. Licences, Ont. T-4748 (S. Small, Caradoc); Ont. ES-178 (Wm. Sterne, Brampton, Ont.); Que. 93274 (I. Scott, no address given).
1 Automobile—Failure of driver to see or hear train. Licence Ont. V-2537 (Mrs. V. Weisner, Thorndale).
1 Automobile—Stalled on crossing in front of train. Licence Ont. V-4909 (C. Auld, Hamilton).
1 Automobile—Driver in unfit physical condition. Licence Cal. 9X6820 (No name or address given).
1 Auto truck—Drove onto crossing in front of train. (Licence not given).

Manitoba

1 Automobile—Carelessness of auto driver. Licence Man. 64-018.
1 Auto truck—Drove onto crossing in front of train. Licence Man. T. 4-214.

Saskatchewan

2 Automobile—Carelessness on part of auto driver. Licences, Sask. 53345; 67-191.
1 Automobile—Driver failed to observe approaching train and was struck. Licence Sask. 40233.
1 Automobile—Licence Sask. 46-921.

Alberta

1 Automobile—Reckless driving on part of driver. Licence Alta. 31-937.

British Columbia

1 Automobile—Drove onto crossing in front of train and was struck. Licence B.C. 33-720.
1 Pedestrian—Walked into path of oncoming train.

Of the 30 accidents at highway crossings, 27 occurred at Unprotected Crossings, and 3 at Protected Crossings. Twenty-one of the accidents occurred during the daylight hours and nine at night.

November 19, 1936.

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The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXVI Ottawa, December 15, 1936 No. 20

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Application of the Smith Transport Limited, Toronto, Ont., for an Order directing the Canadian National Railways to provide and construct suitable crossing over their main line track and two sidings, so as to furnish proper access to their building on east side of Bethune street, Peterborough, Ont.

File No. 40059

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER:

This is an application by the Smith Transport Limited, having their head office in the city of Toronto, for an order directing the Canadian National Railways to construct a suitable crossing over their main line track and sidings upon Bethune street, in the city of Peterborough. Applicants claim to be the owners of a building situate upon the north 54 feet of lot No. 9 north of Simcoe street and west of George street, in the city of Peterborough. They complain that by reason of the condition of the tracks and sidings of the Canadian National Railways upon the said street, they are unable to secure access to their property facing upon Bethune street.

The line of railway upon Bethune street was so constructed by the Midland Railway Company about the year 1880, and the Canadian National Railways are now the owners and proprietors of the said tracks and operate the same in connection with their railway. When the railway line was originally constructed upon Bethune street an agreement was made between the railway company and the city, then the town of Peterborough, in regard to the use of the said street, and by by-law of the town of Peterborough passed on October 30, 1880, the railway company was authorized and empowered to construct and lay down its lines of railway as set out in the said by-law. It was provided in the said by-law that the terms thereof should not be construed to affect or prejudice the rights of private property holders on Bethune street, who might be injuriously affected by the works thereby authorized, and it was further provided that it should be obligatory upon the said railway company to plank with sound planking and always keep planked so much of Bethune street as lies between the rails of all their lines of rails on said street, between Charlotte and Hunter streets, and so much of said street as lies between the sidings and the main track, so that the wheels of vehicles will easily and readily pass over the rails.

Applicants complain that the Canadian National Railways have failed to keep their tracks and sidings upon Bethune street up to the standard prescribed

28756—1

by the said by-law, and state that the said tracks vary from 5 inches to 8 inches in height above the level of the roadway and that the planking has not been maintained as required by the said by-law.

The application was heard in the city of Toronto on 3rd day of November, 1936, in the presence of the applicants and of representatives of the railway company, and after hearing what was adduced by the applicants and by counsel for the railway company an agreement was arrived at between the parties to the following effect, namely:—

1. That the railway company should construct and maintain a planked crossing at least twenty feet in width between all its lines of rails and sidings upon Bethune street, immediately opposite to the entrance door in the building now upon applicants' property facing upon Bethune street, so that the wheels of vehicles will easily pass over the rails; the railway company to pay the cost of construction and maintenance of that portion of the said work above described.

2. Applicants shall be required at their own expense to do whatever may be necessary to fill in or level up that portion of the highway adjoining applicants' property which lies on the easterly side of the most easterly rail of the railway, in order to render the same fit for traffic.

3. Applicants shall also erect and maintain at their own expense a STOP sign at the entrance to their building requiring pedestrians and drivers of all vehicles to stop before crossing the tracks.

4. The crossing to be so constructed and maintained by the railway company shall be in the nature of a private crossing for the use of the owners or occupiers of the above mentioned property, or for their successors in title, and shall in no sense be deemed or considered a public crossing.

5. The crossing shall be constructed by the railway company immediately after the issue of an order of the Board therefor.

An order of the Board will be made accordingly.

OTTAWA, November 7, 1936.

The Assistant Chief Commissioner and Commissioner Stone concurred.

ORDER No. 53705

In the matter of the application of the Smith Transport Limited, of Toronto, Ontario for an Order directing the Canadian National Railways to provide and construct suitable crossing over their main line track and two sidings, so as to furnish proper access to the applicant's building on the east side of Bethune street, Peterborough, Ontario.

File No. 40059

THURSDAY, the 19th day of November, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Toronto, November 3, 1936, in the presence of counsel for the Smith Transport Limited and the Canadian National Railways, and what was alleged, the parties consenting,—

It is ordered:

1. That the Canadian National Railways be, and they are hereby, required to plank with sound planking and keep planked so much of Bethune street as

lies between the rails of their lines of rails on said street and so much of the said street as lies between the sidings and the main track with a width of twenty (20) feet immediately opposite to the entrance door in the building now upon the property of Smith Transport Limited facing upon Bethune street, so that the wheels of vehicles will easily and readily pass over the rails; the said railway company to pay the cost of construction and maintenance of that portion of the said work above described.

2. That the said Smith Transport Limited be, and it is hereby, required, at its own expense, now and hereafter to plank, fill in, or otherwise level up that portion of Bethune street adjoining its property, which lies on the easterly side of the most easterly rail of the railway, for a width of twenty (20) feet immediately opposite the entrance door hereinbefore described, so that the wheels of vehicles will easily and readily pass over the rails of the railway; the said Smith Transport Limited to pay the cost of construction and maintenance of that portion of the said work last described.

3. That the Smith Transport Limited be, and it is hereby, required, at its own expense, to erect and maintain a sign at the entrance door of the said building requiring pedestrians and the drivers of all vehicles to stop before crossing the railway tracks.

4. That the said crossing shall not be deemed or considered a public crossing, but shall be in the nature of a private crossing for the use of the owners or occupiers of the above mentioned property, or for their successors in title.

5. That the work hereinbefore directed shall be constructed by the respective parties forthwith after the issue of this order.

H. GUTHRIE,
Chief Commissioner.

Application of Fort William Elevator Company, Limited, for an Order providing for the free switching of cars to and from the company's terminal elevator at Fort William, Ont., from the Canadian National Railways to the Canadian Pacific Railway and vice versa; and that the cars of one company set out for placing by the switching service of the other shall not be discriminated against.

File 6713.237

JUDGMENT

McLean, Assistant Chief Commissioner:

Order No. 49464 on which appeal is made issued after the hearing of evidence before the Chief Commissioner at Winnipeg on December 28, 1932. The Chief Commissioner reported to the Board thereon, and his report was adopted by the full Board.

Under date of June 3, 1936, application was made by the Fort William Elevator Company, Limited, for an order of the Board providing for free switching of cars to and from the company's terminal elevator at Fort William, Ont., from the Canadian National Railways to the Canadian Pacific Railway Company and vice versa.

It is alleged by the applicant that the Chief Commissioner was in error in his report in various respects. In his report the Chief Commissioner deals with an agreement in writing bearing the date of January 25, 1926, made between the Canadian National Railway Company and the Canadian Northern Railway Company, therein jointly referred to as "the National" of the first part, and the Canadian Pacific Railway Company and Fort William Terminal Railway and Bridge Company, thereinafter referred to as "the Pacific," under which the National agreed to perform the switching service on all road haul traffic origi-

nating at or destined to any point on the Mission property and moving over the lines of the Pacific, and the Pacific agreed to perform the switching service on all road haul traffic originating at or destined to any point on the said islands and moving over the lines of the National. The report then sets out the agreement, which reads as follows:—

> "Whereas the terminal property at Fort William, in the province of Ontario, known as the 'Mission Property' and all the railway facilities thereof, are included in the Lake Superior Branch of the Grand Trunk Pacific Railway which forms part of the Canadian Government Railways;
>
> "And whereas the Pacific owns or controls the terminal property on Islands Numbers 1 and 2 in the said city, and all the railway facilities thereon, which said islands are shown edged in green on the said Plan 'A';
>
> "And whereas the Pacific is desirous of extending its terminal facilities so as to serve the said Mission and any industries now or hereafter situate thereon, and the National is likewise desirous of extending its terminal facilities so as to serve the said islands and any industries now or hereafter situate thereon;
>
> "And whereas in order to avoid duplication and to facilitate the movement of grain and other traffic, the parties hereto have agreed to operate their said terminal properties in conjunction, the one with the other, upon and subject to the terms and conditions hereinafter contained."

Continuing, the report says that under this agreement a provision was made for adjusting the cost of service as between the respective railways, but no charge was to be made against the trade.

The Chief Commissioner then deals with the scope of unjust discrimination, and sets out his conclusions as follows:—

> "In my view, the only ground upon which the applicants can found any claim of unjust discrimination is upon the fact that under this agreement the industries on both the Mission property and Islands Nos. 1 and 2 receive free switching service. The application is really directed against the Canadian Pacific Railway Company, and the applicants say in effect—you deliver cars on which the Canadian National Railways have the road haul from the interchange to the Two Islands without any charge, but on all such cars delivered from the same interchange to our elevator you charge regular switching charges. This undoubtedly creates a preference or advantage to the industries on the islands as against the applicants' industry, but is it an undue or unreasonable preference or advantage? Section 316, subsection 3, of the Railway Act, provides that no company shall,—
>
> > '(*a*) make or give any undue or unreasonable preference or advantage to, or in favour of any particular person or company, or any particular description of traffic, in any respect whatsoever;
> >
> > '(*c*) subject any particular person, or company, or any particular description of traffic, to any undue, or unreasonable prejudice or disadvantage in any respect whatsoever';
>
> "It is not all 'preferences or advantages' which fall within the inhibitions of the statute; only such as are undue or unreasonable. No definition of what constitutes undue or unreasonable preference or advantage is given in the statute, nor does the statute give us any guide for its determination. The reported cases help us very little. The fact that there is in a given case a preference or advantage does not of itself show that such preference or advantage is undue or unreasonable.
>
> "It appears to me in determining this question the interests of all parties must be given consideration. Here we have two neighbouring

industrial areas, one served exclusively by the Canadian National Railways and the other exclusively by the Canadian Pacific Railway Company. Each railway is desirous of obtaining access to the area of the other, in order that each may deliver its line haul cars direct to the industry in these areas without the necessity of calling on the other for interswitching services. It is quite practicable to bring this about by the expenditure of the necessary money, but in order to avoid this expenditure an agreement is arrived at, such as the one in question here, whereby each agrees to switch the other's cars without charge against the trade. The practical result of the agreement is exactly the same as if each railway had gone to the expense of providing its own facilities. Had this been done, the industries on both the Mission property and the Two Islands would have free switching and the applicants would have nothing to complain of. Because free switching is brought about by the agreement between the parties, the applicants claim that this amounts to unjust discrimination. If the applicants are correct in their view that the working out of the agreement in question amounts to unjust discrimination against themselves, then it must follow that no matter how great the necessity for avoiding duplication of facilities may be the two railways are never at liberty to make an arrangement of this sort without giving every other industry in the port served by one railway the right to call upon the other railway for free switching.

"I cannot think for a moment that the statute was ever intended to have such an effect and I hold as a fact that the furnishing of free switching to the industries on the Mission property and the Two Islands did not give any undue or unreasonable preference or advantage to or in favour of the industries so served as against the applicants.

"I would dismiss the application."

As a result of the hearing in Winnipeg on September 24, 1936, the Board has before it the evidence and submissions made at the hearing, as well as the evidence and submissions made at the former hearing, and on which the report of the Chief Commissioner was based.

On consideration, I am of the opinion that the evidence and submissions made do not justify doubt as to the correctness of the conclusions set out in the report of the former Chief Commissioner, and approved of by the Board.

November 12, 1936.

Commissioner Stoneman concurred.

Application of the Fort William Elevator Company, Limited, for free switching to and from its elevator at Fort William, Ontario.

File No. 6713.237.

GARCEAU, *Deputy Chief Commissioner:*—(dissenting)

This case was heard in Winnipeg on the 24th September, 1936.

The applicants previously had made a similar application in 1932 that was heard on December 27, 1932, by the then Chief Commissioner, the Honourable C. P. Fullerton, under the authority of Section 12-(b) of the Railway Act.

In his report, the Chief Commissioner exposed the case as follows:—

"In order to determine the validity of the applicants' claim that discrimination is being exercised against them by the railways, it is necessary to consider briefly the history of the several elevators erected at Port Arthur and Fort William.

"Fort William and Port Arthur are two separate cities divided by a distance of about four miles. They are regarded, however, as constituting together *one terminal.*

"For the purpose of this opinion, the elevators situate at these two ports may be divided into three groups—the Current River group, the Inter-City group and the West Fort William group.

"The applicants' elevator is situate in the latter group, and was built about the year 1913.

"The Current River group is located at Current River at the east of Port Arthur. These elevators have always enjoyed free switching from both railways. At first both the Canadian National and Canadian Pacific Railway Companies built tracks to the different elevators. There were a number of diamonds put in where the Canadian Pacific Railway crossed the Canadian National Railway. This arrangement did not work very satisfactorily and after some negotiation it was arranged that the Canadian National Railways would switch all the elevators at one end and the Canadian Pacific Railway Company all the elevators at the other end.

"The applicants do not place much reliance on the arrangement made at these elevators as bearing on discrimination, the distinguishing feature here being that both railways were actually switching free to the different elevators before the arrangement above referred to was made.

"The next group of elevators is the Inter-City group. They lie in Port Arthur near the boundary between the two cities. As the applicants appear to think that the arrangements between the railways for the service to these elevators has a bearing on the question of discrimination, it is necessary, briefly, to consider the history of the arrangements between the railways with reference to the same.

"In 1913 the Government elevator was built on property purchased from McKenzie & Mann, and it was understood at the time of the purchase that access would be given to the Canadian Pacific Railway Company over the Canadian Northern Railway Company into the Government elevator.

"In January, 1917, Davidson & Smith, who had an elevator immediately alongside the Government elevator, applied to the Board for an order granting the Canadian Pacific Railway Company authority to use the Canadian Northern Railway Company's tracks leading to the elevator of the applicants on the same terms and conditions as governed the use of the tracks to the Dominion Government elevator. The site on which this elevator was built also was purchased from McKenzie & Mann, and Davidson & Smith alleged that at the time of the purchase it was the understanding that they should have the same railway service as the Government elevator, namely, both the Canadian Pacific Railway and the Canadian Northern Railway. On September 16, 1918, the Board made an order authorizing the Canadian Pacific Railway Company to use and operate the Canadian Northern Railway Company's spur into the applicants' elevator. The Canadian Pacific Railway Company refused to furnish service to Davidson & Smith elevator and on April 6, 1921, the Board made an order requiring this railway company to furnish to the applicants' elevator, under the permission granted by Order No. 27695, the same traffic facilities as the company was furnishing to the Government elevator under the permission granted by the order of the Board, No. 20593, dated October 17, 1913.

"The order was based on unjust discrimination. The Board held that since the Canadian Pacific Railway Company was serving the Government elevator, it was obliged to serve the Davidson & Smith elevator which was similarly situated.

"In September, 1921, the Thunder Bay Elevator Company, which had built an elevator alongside the Government elevator, applied for an Order directing the Canadian Northern Railway Company to allow the Canadian Pacific Railway Company to switch to their elevator.

"On August 11, 1922, an order was made authorizing the Canadian Pacific Railway Company to operate the Canadian Northern Railway Company's spur into the applicants' elevator.

"In 1922, Parrish and Heimbecker applied for and obtained a similar Order giving the Canadian Pacific Railway Company authority to use and operate the Canadian Northern Railway Company's spur line into their elevator.

"Subsequently, an arrangement was made, confirmed by the Board, under which the work of serving the elevators was divided between the two railways, the Canadian Pacific Railway Company serving the elevators west of the Government elevator, and the Canadian Northern Railway Company those east of the Government elevator. The arrangement was very similar to the arrangement made at Current River.

"I do not regard the arrangement under which the elevators in the Inter-City area obtain free switching as having any bearing whatever on the question of unjust discrimination. Both railways were serving these elevators, and it was merely to save inconvenience and expense necessarily involved in two railways attempting to serve a number of elevators where one railway had to cross the lines of the other, that the arrangement was made.

"We now come to West Fort William, where the elevator of the applicants is situated.

"At West Fort William there are two areas, namely, the Mission property and the Two Islands known as Island No. 1 and Island No. 2. Prior to 1926 the Mission property was served exclusively by the Canadian National Railways and the islands exclusively by the Canadian Pacific Railway Company. As it is in respect of the elevators situate on the Mission property and the Two Islands that any question of discrimination can possibly arise, it is important to indicate clearly their respective locations in reference to the applicants' elevator.

"The Kaministiquia river flows in a northeasterly direction and runs into Lake Superior near the boundary between Fort William and Port Arthur. About 13,000 feet from the mouth of the Kaministiquia river, the Mission river branches off in a southeasterly direction running into Lake Superior, and to the southwest lies what is known as the Mission property.

"About 9,000 feet from the mouth of the Kaministiquia River the McKellar River branches off in an easterly direction running into Lake Superior, and forms what is known as Island No. 1 and Island No. 2, which are separated by McKellar River.

"The applicants' elevator is situate on the north of the Kaministiquia river, and both the Mission property and Island No. 1 and Island No. 2 are situate on the south. There is a distance of about three miles between the applicants' elevator and the islands.

"On the Mission property there are at present two elevators—the Grand Trunk Pacific elevator built in 1911, and the Searle elevator built quite recently. On Island No. 1 there was in 1896 the Dwyer, later called the Gillespie elevator. This was burned down about three years ago. The only other industry on either of the islands is the Canada Starch Works, which has been closed down for a number of years.

"As has already been stated, up to January 25, 1926, the Canadian National Railways exclusively served the Mission property and the Canadian Pacific Railway Company Islands No. 1 and No. 2.

"By an agreement in writing bearing date January 25, 1926, made between the Canadian National Railway Company and the Canadian Northern Railway Company, therein jointly referred to as "the National" of the first part, and the Canadian Pacific Railway Company and Fort William Terminal Railway and Bridge Company, thereinafter referred to as "the Pacific" the National agreed to perform the switching service on all road haul traffic originating at or destined to any point on the Mission property and moving over the lines of the Pacific, and the Pacific agreed to perform the switching service on all road haul traffic originating at or destined to any point on the said islands and moving over the lines of the National. The agreement contains the following recitals:—

"'Whereas the terminal property at Fort William in the province of Ontario, known as the "Mission Property" and all the railway facilities thereof, are included in the Lake Superior Branch of the Grand Trunk Pacific Railway which forms part of the Canadian Government Railways;

"And whereas the Pacific owns or controls the terminal property on Islands Numbers 1 and 2 in the said city and all the railway facilities thereon, which said islands are shown edged in green on the said Plan "A";

"And whereas the Pacific is desirous of extending its terminal facilities so as to serve the said Mission and any industries now or hereafter situate thereon, and the National is likewise desirous of extending its terminal facilities so as to serve the said islands and any industries now or hereafter situate thereon;

"And whereas in order to avoid duplication and to facilitate the movement of grain and other traffic, the parties hereto have agreed to operate the said terminal properties in conjunction, the one with the other, upon and subject to the terms and conditions hereinafter contained;

"Under this agreement a provision was made for adjusting the cost of service as between the respective railways, but no charge was to be made against the trade."

The evidence also shows that there are other industries than those above mentioned in the Mission and other areas; that the Thunder Bay Elevator Company was built in 1909 prior to the construction of the Government elevator in 1913; but the report says that the Thunder Bay elevator was built alongside the Government elevator, and the latter, through agreements with the railways, enjoyed free switching, and the Thunder Bay elevator, constructed previously, had this advantage only through an Order of the Board issued in 1921.

The evidence established the important facts that the Fort William elevator can be connected with Canadian National tracks by using Canadian Pacific tracks for a distance of about 400 feet; that, in similar circumstances the use of Canadian National tracks by Canadian Pacific was not only permitted but ordered by the Board, to serve the Davidson & Smith Co., on April 6, 1921, and, in 1922, to serve the Thunder Bay elevator, the orders being based on "unjust discrimination" as mentioned in the report above quoted, although the same report, a few lines below, says:—"I do not regard the arrangement under which the elevators in the Inter-City area obtain free switching as having any bearing whatever on the question of unjust discrimination."

The above uncontroverted facts show that this agreement was entered into by the railways because the orders mentioned above, issued to prevent unjust discrimination in favour of the Government elevator against other elevators located on the Canadian National Railways, imposed on one railway the obligation to use, against its will, the tracks of the other railway also unwilling to allow such use, in order that no switching charges be made to the trade.

The agreement passed later by the railways granting free switching was entered into in order to facilitate their operations and to avoid the unjust discrimination previously condemned by the Board.

The agreement concerning the Current River area was also entered into to facilitate operations and to save expenses in the maintenance of existing tracks serving the elevator.

In the Fort William area the Agreement was made to save unnecessary expense in the construction of tracks by either one of the railways in order that the elevators be served by both railways; but, in this agreement the railways took upon themselves to select the elevators that would enjoy free switching.

The railways' action, their agreements between themselves, whatever may have been the reasons for such agreements being entered into, cannot transgress the dispositions of the Railway Act, in this instance, of section 314 (1), viz:—

> "All tolls shall always under substantially similar circumstances and conditions, in respect of all traffic of the same description, and carried in or upon the like kind of cars or conveyances, passing over the same line or route, be charged equally to all persons and at the same rate, whether by weight, mileage, or otherwise."

. . . . .

The question to decide is in regard to the *tolls* (314) and not the *facilities, for the receiving, forwarding and delivering of traffic* (316).

Switching charges are tolls according to weight and, in the present instance, it is 5 cents per 1,000 pounds.

The application reads as follows:—

> "The Fort William Elevator Company Limited hereby makes application for an Order of the Board providing for the free switching of cars to and from the company's terminal elevator at Fort William from Canadian National Railways to the Canadian Pacific Railway Company, and vice versa. . . ."

With due deference to a different opinion, I submit that there was an error in the report deciding the question according to the disposition of section 316.

The last-mentioned section concerns only traffic facilities to be supplied by the railways to the trade and the following commentaries on that section corroborate this opinion:—

Freight Rates Case, 17 C.R.C., p. 17, viz:—

> "The effect of the section is then to extend the principle of equality to facilities to be supplied by the railway, and its treatment of shippers. The section, however, is not as positive in its terms as subsection 1 of section 315" (now 314). "Preference to any particular shipper is not forbidden, probably for the reason that it would be impossible that any large business such as freight transportation could be carried on handling each particular consignment of goods in turn perhaps having regard to date of order or time of delivery; but the preference must not be either undue or unreasonable."

The late Chief Commissioner, the Honourable Mr. Blair, in his judgment *re:* Standard Junction Case, 3 C.R.C. p. 256, at pages 259 and 260, states:—

> "It is not in the nature of things possible to secure anything like absolute equality of treatment to all persons who use the railways or even like treatment to all who are using the same railway. The general public have theoretically a right to complaint if the people in one or more sections of country served by a particular railway are given a better service than the people of other sections; but with every desire on the

part of the railway company to accord equally fair treatment to all patrons over its entire system, circumstances and conditions are too controlling oftentimes, to be resisted or overcome."

Equality of tolls being dependent of good-will only has never to deal with the above-mentioned conditions.

The judgment in the Western Freight Rates Case, 17 C.R.C. p. 148, after quoting the above declaration, says:—

> "I know of no case where the exact question has been determined, but am of the opinion that having regard to the admitted object for which the section must have been enacted, that is to secure in as far as *practicable, equality of treatment,* that any practice, the direct result of which would be to favour one shipper as against another, would constitute an undue or unreasonable preference or advantage, and be within the meaning of the Act."

The various orders above-mentioned imposing on the Canadian Pacific Railway the obligation to serve the Davidson & Smith, the Thunder Bay and the Parrish and Heimbecker elevators, by passing over the Canadian National tracks; and the Canadian National Railways to permit the Canadian Pacific Railway Company to use their tracks, were issued under the authority of section 316 for they dealt with traffic facilities.

In the present instance, the Board is asked to decide a question concerning tolls.

In the matter of traffic facilities, discrimination is not always unjust discrimination. There are sometimes physical difficulties which prevent the railways from giving equal facilities to the trade and this is why, as so ably expressed in the authorities above quoted, it is not always possible for the railways to give equal facilities; but, equality of tolls has never to contend with such difficulties and, in circumstances and conditions substantially similar to those established, is always imperative and any preference or discrimination becomes unjust discrimination or a preference prohibited by law—section 314.

I would refer to 17 C.R.C. p. 146, Western Freight Rates Case:—

> "The effect of this section is to provide that, in so far as the same portion of the line of railway is concerned, all tolls charged under substantially similar circumstances and conditions for the same traffic and upon the like kind of cars shall be charged equally to all persons and at the same rate and without further reduction or advance.
>
> "A qualification is made which enables the company to charge a smaller toll for larger quantities, greater numbers, or longer distances, so long as the reduced toll is *under similar circumstances available to all persons.* Subsection 4 extends the principle of equality to different localities. The principle is adopted but has not in this instance been extended by Parliament to the same extent. Under it discrimination is justifiable as between different localities, so long as it does not amount to an unjust discrimination; *while under the previous subsection traffic of the same description moving over the same portion of the railway under like conditions must be carried under tolls charged equally to all persons and at the same rate basis."*

The agreements created a preference against the applicants' industry which paid during the last three years the following amounts in switching charges:—

Season 1932-1933	$8,082 71
Season 1933-1934	6,498 44
Season 1934-1935	7,091 70

These are charges which their competitors have not had to pay.

Any preference concerning tolls, as in the present case, is an undue preference and prohibited by law—section 314 (1).

. . . . .

"The Board may review, rescind, change, alter or vary any order or decision made by it"—section 51 of the Railway Act.

These discretionary powers are not to be used arbitrarily but to reform or vary an arbitrary decision or order where error is evident.

I would grant the application: "the Canadian Pacific Railway shall exclusively serve the Fort William Elevator from the spur by which they are now serving such elevator and switch cars to and from such elevator both from their own lines and from the lines of the Canadian National without charge against traffic; but the Canadian National shall pay the Canadian Pacific $1.50 for each loaded Canadian National car switched by the Canadian Pacific inward or outward to or from said Fort William Elevator;" if the Canadian National Railways object to this charge, the amount is to be determined by the Board on application of the railway company. "No charge to be made for the switching of empty cars."

Ottawa, November 16, 1936.

ORDER No. 53720

In the matter of the application of the Fort William Elevator Company, Limited, for reconsideration of the Order of the Board No. 49464, dated January 26, 1933, refusing the company's application for an Order providing for the free switching of cars to and from its terminal elevator at Fort William, Ontario, from the Canadian National Railways to the Canadian Pacific Railway and vice versa; and that the cars of one company set out for placing by the switching service of the other shall not be discriminated against.

File No. 6713.237

Friday, the 20th day of November, A.D. 1936.

Hon. Hugh Guthrie, K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*
J. A. Stoneman, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Winnipeg, September 24, 1936, in the presence of counsel for the Fort William Elevator Company, Limited, the Canadian Pacific Railway Company, and the Canadian National Railways, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

Application of Mr. Herve Page of Laprairie, Que., for the construction of a crossing on his property which is crossed by the line of the Canadian National Railways.

File No. 40088

JUDGMENT

Guthrie, Chief Commissioner:

This is an application by Mr. Herve Page, of Laprairie, Quebec, for the construction of a farm crossing on his property which is crossed by the line of the Canadian National Railways. The application was heard at Montreal on November 12, 1936, in the presence of counsel for the applicant and for the Canadian National Railways.

The land in question in this application consists of the westerly portion of lot No. 558 in the parish of Laprairie, in the county of Laprairie, and it is

crossed by the line of the Canadian National Railways running east and west. At the time of the construction of the railway lot No. 558 was owned by Joseph Brosseau and Alexander Brosseau, and on September 9, 1880, Joseph and Alexander Brosseau made a conveyance to the Montreal and Champlain Junction Railway Company of the right of way across the whole of lot No. 558. The Canadian National Railways now own and operate this line of railway.

At the time of the execution of the said conveyance lot No. 558 was occupied as a single farm, but at that time a ditch ran down the middle of it from north to south, which is shown upon the right of way plan filed by the railway company as exhibit No. 2. About twenty years ago Ulric Page became the purchaser of lot No. 558, and in 1926 Herve Page, the applicant, became the owner of the west half of this lot. At the time the purchase was made from Ulric Page there were two farm crossings upon this property, one on each side of the ditch, and it is quite likely that these farm crossings existed from the date of the construction of the railway until about ten years ago when the crossing on the west half of the lot became obliterated. Both of these farm crossings are shown on the right of way plan, exhibit No. 2. Two witnesses, who had resided a long time in the locality and were familiar with these crossings, testified that the crossing on the west side of the lot had existed and was used up to some eight or ten years ago, and they both stated that the crossing could still be identified at the point indicated upon the said plan. A member of the engineering staff of the railway company testified that he had personally examined the locus and could find no evidence that a crossing had ever existed on the west side of the ditch. It is to be noted, however, that in his examination of the locus the engineer had not noticed the ditch which still exists between the two halves of this lot.

Upon the evidence I would find that a farm crossing was originally constructed upon the west half of lot No. 558 now owned by the applicant, and that the railway company through neglect, oversight or otherwise has permitted this crossing to be done away with without the consent of the owner. In my opinion, the applicant is entitled to have this farm crossing reconstructed upon his property at the point where the former crossing existed, as shown upon the said plan. An order will be made requiring the railway company to reconstruct and maintain this farm crossing at its own expense.

OTTAWA, November 19, 1936.

The Deputy Chief Commissioner and Commissioner Stoneman concurred.

ORDER No. 53716

In the matter of the application on behalf of Herve Page, of Laprairie, in the Province of Quebec, hereinafter called the "Applicant," under Section 273 of the Railway Act, for an Order directing the Canadian National Railways to provide and construct a suitable farm crossing on his property, in Lot 558.

File No. 40088

FRIDAY, the 20th day of November, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Montreal, November 12, 1936, in the presence of counsel for the applicant and the railway company, and what was alleged,——

It is ordered: That the Canadian National Railways be, and they are hereby, required to reconstruct and maintain the farm crossing formerly existing on the

west half of the said lot 558, now owned by the applicant in the parish of Laprairie, county of Laprairie, and province of Quebec; the said farm crossing to be constructed and maintained at the expense of the railway company, and in accordance with the Standard Regulations of the Board Affecting Farm Crossings.

H. GUTHRIE,
Chief Commissioner.

Application of the Township of Cornwall, Ont., that its share of the cost of maintenance and operation of gates at the crossing of the Canadian National Railways, 300 yards west of Cornwall Station, as provided under Orders No. 15377, dated November 7, 1911, and No. 27701, dated September 13, 1918, be borne and paid entirely by the United Counties of Stormont, Dundas and Glengarry.

Case No. 3152

JUDGMENT

COMMISSIONER STONEMAN:

The above application was listed for hearing and heard by Commissioner Stone and myself at a sittings held in Cornwall, Ont., on November 17, 1936. The Township of Conwall, the Town of Cornwall, the United Counties of Stormont, Dundas and Glengarry, and the Canadian National Railways were represented by counsel at the hearing.

By Order of the Board No. 15377, dated November 7, 1911, the cost of maintaining and operating the gates at the crossing of the highway by the railway, which runs northerly from Pitt street, in the town of Cornwall, being the highway immediately west of the railway company's station at Cornwall, was apportioned 20 per cent against the township of Cornwall, 25 per cent against the town of Cornwall, and 55 per cent against the railway company.

On an application by the township for reconsideration of this order and to add the United Counties of Stormont, Dundas and Glengarry as a party thereto, the Board, after hearing at which all interests were represented, by its Order No. 27701, dated September 13, 1918, amended said Order No. 15377 to provide that 45 per cent of the cost of the maintenance and operation of the gates be divided equally between the United Counties, the town of Cornwall, and the township of Cornwall, and that 55 per cent of such cost be borne by the railway company.

Prior to the township's application in 1918 for reconsideration of the original order, the highway in question had been taken over as a county road by By-law No. 1811, passed by the Municipal Corporation of the United Counties the 26th day of October, 1916, and approved by the Lieutenant-Governor in Council January 23, 1917. This evidence was before the Board and taken into consideration when Order No. 27701, dated September 13, 1918, was made.

The present application is to amend that order by relieving the township and the town of the cost apportioned against them under it. The ground upon which the application is based is that as the highway where the gates are installed had been established and assumed by the county corporation as a county road, the cost of maintaining and operating these gates should properly be borne and paid by that corporation.

By-law No. 2155, passed by the Corporation of the United Counties of Stormont, Dundas and Glengarry the 14th of November, 1925, amends By-law No. 1811 in certain particulars, but continues the highway involved in this application as a county road, and specifically includes it in the county road system of the said United Counties. There is accordingly no change in that respect since the former judgment and order of the Board.

While the Board has power under the Railway Act to vary previous orders, its practice has been not to exercise this power except under changed circumstances, or for the purpose of rectifying errors which may have occurred through want of information, oversight, or otherwise.

No new facts were developed by the applicant municipalities at the recent hearing in Cornwall which were not before the Board and considered in connection with the 1919 application, except the production of the later by-law passed in 1925. This by-law, as stated, does not in any way change the status of the parties in respect of the highway concerned in this application.

For the reasons above set out the application should, in my opinion, be dismissed.

November 24, 1936.

Commissioner Stone concurred.

ORDER No. 53747

In the matter of the Order of the Board No. 15377, dated November 7, 1911, as amended by Order No. 27701, dated September 13, 1918, requiring the Grand Trunk Railway Company to erect, maintain, and operate gates, with day and night watchmen, at the crossing of the highway 300 yards west of Cornwall Station, in the Province of Ontario, and apportioning the cost of maintenance and operation among the United Counties of Stormont, Dundas and Glengarry, the Town of Cornwall, the Township of Cornwall, and the Grand Trunk Railway Company;

And in the matter of the application of the Township of Cornwall that its share of the cost of maintenance and operation of the said gates be borne and paid entirely by the United Counties of Stormont, Dundas and Glengarry.

Case No. 3152

SATURDAY, the 28th day of November, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the matter of the sittings of the Board held in Cornwall, November 17, 1936, in the presence of counsel for the Township of Cornwall, the Town of Cornwall, the United Counties of Dundas, Stormont and Glengarry, and the Canadian National Railways, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

Application of the Department of Highways, Province of Nova Scotia, re *proposed change in grade crossing, Trans-Canada Highway and Canadian National Railways, at McIntyre Lake, Richmond County, N.S.*

(File No. 36352.31)

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER:

This is an application of the Department of Highways of the Province of Nova Scotia to authorize a change in the grade crossing of the Trans-Canada Highway over the Canadian National Railway at McIntyre Lake, in the county

of Richmond, province of Nova Scotia. The application was heard at Halifax on the 24th day of November, 1936, in the presence of counsel for the applicant and of the Canadian National Railways.

The applicant is constructing a highway, known as the Trans-Canada Highway, and desires to cross the line of the Canadian National Railways at a point to the west of the station known as McIntyre Lake station. The proposed crossing will be at from 55 to 60 feet from the point where a crossing has heretofore existed. The present highway crosses the main line track of the railway and also a switching track and, if the proposed new crossing be authorized, it will be necessary for the railway company to rearrange its siding facilities at the above station. This rearrangement will involve the removal of the present siding from the west to the east end of the station yard, and will leave only one track to be crossed by the highway instead of two tracks as formerly. Such a rearrangement would relieve the railway company in the future from the cost of maintenance of the present siding crossing and would also be of some benefit to the railway company in affording better switching facilities than now exist at McIntyre Lake station.

The railway company originally submitted that the proposed change would involve an expenditure on its part of approximately $3,000, but at the hearing it was stated that the estimate of expenditure would probably be not more than $2,850. The applicant still considers that $2,850 is an excessive estimate. The question of the amount of expenditure necessary to effect the above changes was by direction of the Board submitted to the Chief Engineer of the Board and, after conference with the applicant and the officials of the railway company, the Chief Engineer concluded that an expenditure of $2,500 would be sufficient to cover the above work.

The crossing in question is one to which the Board might properly order a contribution from the Railway Grade Crossing Fund up to 40 per cent of the expenditure involved.

In my opinion a grant of $1,000 should be made in respect of this work from the Railway Grade Crossing Fund, based upon 40 per cent of an expenditure of $2,500. I consider that the applicant should pay the sum of $700 on account of the above work, and that the balance of such expenditure should be paid by the Canadian National Railways.

It was very strongly urged upon the Board by counsel for the Canadian National Railways that the railway company should be put to no expense whatever in respect of a work of this kind. It was pointed out that the improvement and construction of the Trans-Canada Highway will be largely for the benefit of increased motor traffic, which to a great extent will form a competitive transportation agency to the railway both in respect of freight and passenger traffic, and that the railway company should not be asked to contribute any sum in respect thereof. However, the railway company will derive some advantage and some benefit as a result of the above changes. The fact that the railway company will be relieved from the future maintenance of the present siding crossing and will be afforded better switching facilities, and will be less liable to crossing accidents on account of the improvement to the view of approaching trains, would justify the railway company being asked to contribute a fair proportion of the cost of the work.

I think an order should be made to authorize the change of location of the crossing by the Trans-Canada Highway, as set out in the application and shown upon the plan filed, and also to authorize the removal of the present siding to the easterly end of the station grounds, and that the cost of these changes estimated at $2,500 be divided as above set out.

Ottawa, November 28, 1936.

The Deputy Chief Commissioner and Commissioner Stone concurred.

ORDER No. 53751

In the matter of the application of the Department of Highways for the Province of Nova Scotia, hereinafter called the "Applicant," under Section 257 of the Railway Act, for authority to change the location of the crossing of the Canadian National Railways at mileage 7·18 Sydney Subdivision, at McIntyre Lake, in the County of Richmond, as shown on the plan and profile on file with the Board under file No. 36352.31.

WEDNESDAY, the 2nd day of December, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Halifax, Nova Scotia, November 24, 1936, in the presence of counsel for and representatives of the applicant and the railway company, and what was alleged,—

It is ordered:

1. That the applicant be, and it is hereby, authorized to divert the Trans-Canada Highway so as to cross the Canadian National Railways a short distance to the west of the existing crossing at McIntyre Lake station, in the county of Richmond, province of Nova Scotia, as shown on the plan and profile on file with the Board under file No. 36352.31, and in accordance with and subject to the Standard Regulations of the Board Affecting Highway Crossings; and that the railway company remove its present loading siding from the vicinity of the crossing and reconstruct it and the piling grounds at the east end of the station grounds, for the purpose of improving the view at the said crossing.

2. That forty percent of the cost of the said work, not exceeding, however, the sum of $1,000, be paid out of the Railway Grade Crossing Fund, the applicant to contribute thirty per cent, not exceeding the sum of $700, and the remainder to be borne and paid by the Canadian National Railways; and that the cost of maintaining the said crossing be paid by the railway company.

H. GUTHRIE,
Chief Commissioner.

Application of Mr. Emile Lazure, St. Isidore, P.Q., for the construction of a farm crossing on his property, Lot 36, Concession of St. Regis, Parish of St. Isidore, County of Laprairie, Province of Quebec, which is crossed by the line of the Canadian National Railways.

(File No. 39773)

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER.

This is an application by Mr. Emile Lazure for a farm crossing over the Canadian National Railway upon his farm in the parish of St. Isidore, county of Laprairie and province of Quebec. The farm of the applicant is known as Lot 36, in the parish of St. Isidore, and is crossed by the line of the Canadian National Railways from Montreal to Massena.

In 1881 lots 35 and 36 were owned by Julien Colpron, and on the 7th day of March, 1881, the then owner conveyed a right of way across both of said lots to the Montreal and Champlain Junction Railway Company. Subsequently, both of these lots were conveyed to a man named Yelle and both lots continued to be occupied as one farm until about the year 1928. Upon Yelle's death his son, Alphonse, became the owner of lot 35, and his son-in-law subsequently became the owner of lot 36. After the construction of the railway line,

a farm crossing was established over the railway a little to the east of the boundary line between the two lots and this farm crossing has been maintained ever since. There never has been a farm crossing upon lot 36, and the applicant complains that he is unable to get upon the northerly half of his farm without passing through the farm crossing upon lot 35, which belongs to his brother-in-law. While this arrangement is satisfactory during the present ownership of these lots by relatives, the applicant feels that he is entitled to a farm crossing upon his own land. There is no doubt that at the time the applicant acquired the land the railway company occupied a position of seniority in respect of lot 36. It is estimated that the cost of constructing a farm crossing on lot 36 with the necessary gates, etc., will be $85.

It is to be noted that the right of way in this case was acquired by the railway company prior to the passage of the Railway Act of 1888. The Act of 1888 was the first Act which gave to owners of land which had been severed by a railway the right to have crossings constructed and maintained at the expense of the railway. Prior to the Railway Act of 1888 there was no statutory obligation upon a railway company to provide such crossings. It has been held in many cases that the Railway Act of 1888 was not retroactive.

Applying the usual rule as to seniority in cases of this kind, the order of the Board should be that a farm crossing be constructed upon the farm of the applicant crossed by the Canadian National Railway, but that the cost of construction and of future maintenance be borne by the applicant.

Ottawa, November 30, 1936.

Commissioner Stoneman concurred.

Garceau, Deputy Chief Commissioner:

In my opinion, it is immaterial whether or not the disposition of the Railway Act of 1888, now section 272, is retroactive. The title deed of the company to its right of way across lots thirty-five and thirty-six, formally warranted the company against any encumbrances or evictions. This contractual disposition precludes the applicant from enjoying the privileges covered by section 272; but, there being no doubt as to the necessity of a farm crossing, I would direct under section 273, the Canadian National Railways to build a crossing, the cost of its construction and maintenance to be borne by the applicant.

Ottawa, December 2, 1936.

ORDER No. 53759

In the matter of the application of Emile Lazure, of St. Isidore, in the County of Laprairie, Province of Quebec, hereinafter called the "Applicant," under Section 273 of the Railway Act, for an Order directing the Canadian National Railways to construct a farm crossing on his property in Lot 36, Concession of St. Regis, Parish of St. Isidore:

File No. 39773.

Thursday, the 3rd day of December, A.D. 1936.

Hon. Hugh Guthrie, K.C., *Chief Commissioner.*
F. N. Garceau, K.C., *Deputy Chief Commissioner.*
J. A. Stoneman, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Montreal, November 12, 1936, in the presence of counsel for and representatives of the applicant, the applicant also appearing in person, and what was alleged,—

It is ordered: That the Canadian National Railways be, and they are hereby, required to construct a farm crossing on the applicant's property in

lot 36, concession of St. Regis, in the parish of St. Isidore, county of Laprairie, and province of Quebec, in accordance with the Standard Regulations of the Board regarding farm crossings.

2. That the cost of constructing and maintaining the said farm crossing be borne and paid by the applicant.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53704

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for permission to file on less than statutory notice a supplement to Tariff C.R.C. No. E-4734, to correct erroneous cancellation date.

File No. 27612.145

WEDNESDAY, the 18th day of November, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon its appearing that, through error, the applicant company changed the expiry date of items 871-A, 872-B, and 873-A, as published in Supplement No. 15 to the said Tariff C.R.C. No. E-4734, from November 10, 1936, to December 31, 1936, and that the competing Canadian National Railways properly cancelled their rates as of November 10, 1936,—

It is ordered: That the applicant company be, and it is hereby, permitted to cancel, upon one day's notice, the rates named in items 871-A, 872-B, and 873-A of its Tariff C.R.C. No. E-4734.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 53723

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

MONDAY, the 23rd day of November, A.D. 1936.

S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 751, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Temiscouata Railway Company's proportion to be reported as shown below.

2. And the Board hereby certifies that the Temiscouata Railway Company's proportion of normal tolls for the purpose of reimbursement under subsection 3

of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 751, approved herein, is as shown below:—

To	Cents per 100 pounds A Tariff	A Normal	B Tariff	B Normal	C Tariff	C Normal
Crabtree, Que.					5	6½
Cornwall, Ont.					4	5
Donnacona, Que.					5	6½
Grand'Mere, Que.					5	6½
Georgetown, Ont.					4½	5½
Hawkesbury, Ont.					5	6½
La Tuque, Que.	5	6½	7	9	..	..
Limoilou Jct., Que.					4	5
Merritton, Ont.					4½	5½
Ottawa, Ont.					5½	7
Thorold, Ont.					4½	5½
Trois Rivieres, Que.					..	..
Shawinigan Falls, Que.					5	6½
Windsor Mills, Que.					4½	5½

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 53724

In the matter of specifications for shipping containers for the transportation by express of acids, inflammables, oxidizing substances, etc., C.R.C. No. E.T. 700.

File No. 1717.12

THURSDAY, the 19th day of November, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon its appearing that the said specifications are exact copies of those approved and prescribed for the transportation of the above-mentioned articles by freight,—

It is ordered: That the said Tariff C.R.C. No. E.T. 700 be, and it is hereby, approved for use by all the express companies subject to the jurisdiction of the Board.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53726

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 23rd day of November, A.D. 1936.

S. J. McLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in items 94 and 101-B of Supplement No. 13 to Tariff C.R.C. No. 907, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved. subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said items 94 and 101-B of the said Supplement No. 13 to Tariff C.R.C. No. 907, approved herein, are as follows:—

Item	Cents per 100 pounds
94	10
101-B	6½

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 53727

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 23rd day of November, A.D. 1936.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in items 94-A and 96-A of Supplement No. 14 to Tariff C.R.C. No. 907, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried in items 94-A and 96-A of the said Supplement No. 14 to Tariff C.R.C. No. 907, approved herein, are as follows:—

Item	Cents per 100 pounds
94-A	9
96-A To Yarmouth, N.S.	4½

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 53735

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

SATURDAY, the 28th day of November, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

It is ordered: That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act

be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement 13 to Tariff C.R.C. No. E-1261.
Supplement 35 to Tariff C.R.C. No. E-1504.
Supplement 28 to Tariff C.R.C. No. E-1737.
Supplement 29 to Tariff C.R.C. No. E-1737.
Supplement 32 to Tariff C.R.C. No. E-1911.
Supplement 8 to Tariff C.R.C. No. E-1976.
Supplement 19 to Tariff C.R.C. No. E-2047.
Supplement 20 to Tariff C.R.C. No. E-2047.
Supplement 26 to Tariff C.R.C. No. E-2248.
Supplement 4 to Tariff C.R.C. No. E-2444.
Supplement 5 to Tariff C.R.C. No. E-2444.
Supplement 6 to Tariff C.R.C. No. E-2444.
Tariff C.R.C. No. E-2482.
Tariff C.R.C. No. E-2494.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53746

In the matter of the application of the New York Central Railroad Company and the Michigan Central Railroad Company (the New York Central Railroad Company Lessee), hereinafter called the "Applicant Companies," under Section 342 of the Railway Act, for relief from posting certain tariffs at stations at which the population is over 1,000 and not over 2,000 and at stations at which the population is over 2,000 and not over 10,000:

File No. 39362.

SATURDAY, the 28th day of November, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner,*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Assistant Chief Traffic Officer of the Board,—
It is ordered and declared:

1. That the applicant companies be, and they are hereby, relieved from posting tariffs to the following extent, namely:—

(*a*) That at stations where the population is over 1,000 and not over 2,000 only the Canadian Freight Classification, Standard and Local Specific Class Tariffs, and any other tariffs for which there is frequent use, be posted; and that other tariffs for the use of agents at such stations be posted in the office of the Division Freight Agent in charge of that territory; and

(*b*) That at stations at which the population is over 2,000 and not over 10,000 tariffs that are never used need not be posted.

2. That if it is found by certain agents that tariffs required for occasional or isolated shipments are not posted, the required information can be secured by them by telegraph from the division freight agents in charge of the district.

3. That, in the event of any tariff not on file at a station being required on account of frequent movement, or if any shipper requests that a tariff be posted at a particular station, such tariff shall immediately be placed on file at that station.

4. That this order is subject to amendments or revision in the event of such action appearing necessary in the public interest.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53757

In the matter of the application of the Transportation Commission of the Maritime Board of Trade for a reduction in rates on potatoes as per Canadian National Railways Tariff C.R.C. No. E-1671 and Canadian Pacific Railway Tariff C.R.C. No. E-4485 by 3 cents per bushel or 5 cents per 100 pounds, carloads, to correspond with reductions in Ontario and Quebec, as per Canadian National Railways Tariff C.R.C. No. E-2115 and Canadian Pacific Railway Tariff C.R.C. No. E-4742:

File No. 34822.40

FRIDAY, the 4th day of December, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing counsel for the Province of Nova Scotia, the Province of New Brunswick, the Province of Prince Edward Island, the Transportation Commission of the Maritime Board of Trade, the Halifax Board of Trade, the Saint John Board of Trade, Perth County Board of Trade, Victoria County Board of Trade, Associated Shippers of New Brunswick, Prince Edward Island Potato Growers' Association, Porter Brothers Limited, Austin Scales, the Canadian National Railways, and the Canadian Pacific Railway Company,—

It is ordered: That leave be granted to the Province of Nova Scotia, the Province of New Brunswick, the Province of Prince Edward Island, the Transportation Commission of the Maritime Board of Trade, the Halifax Board of Trade, the Saint John Board of Trade, the Perth County Board of Trade, Victoria County Board of Trade, Associated Shippers of New Brunswick, Prince Edward Island Potato Growers' Association, Porter Brothers Limited, and Austin Scales to appeal to the Supreme Court of Canada from the judgment of the Board dated January 3, 1936, and order granted thereon, upon the following questions of law or of jurisdiction arising out of the said judgment:—

1. Whether, upon the facts as found by the Board, the Board was right—

(*a*) In holding that the Maritime Freight Rates Act does apply to competitive tariffs established by railway companies between points outside the "select territory" as defined in the Act, and that Maritime shippers, in respect of "preferred movements" over the "eastern lines" of the Canadian National Railways as defined in the Act, or in respect of movements similar to "preferred movements" over the railways of other companies which have filed with the Board tariffs of tolls meeting the statutory rates referred to in Section 7 of the Act, are entitled to a reduction in the freight rates on such preferred movements proportionate to the reductions effected by such competitive tariffs in order to maintain the ratio of advantage accorded to them under the terms of the Act: Provided, however, that it can be established that any such competitive tariff issued by a railway company outside the "select territory" "may

destroy or prejudicially affect" the advantages given by the Act to Maritime shippers in favour of persons or industries located elsewhere than in the "select territory" as provided by Section 8 of the Act;

(*b*) In adding the foregoing proviso to the decision giving rise to question (*a*), namely:—

"Provided, however, that it can be established that any competitive tariff issued by a railway company 'may destroy or prejudicially affect' the advantages given by the Act to Maritime shippers in favour of persons or industries located elsewhere than in the 'select territory' as provided by section 8 of the Act."

(*c*) In holding that the mere production of such competitive tariffs showing reductions in rates outside the select territory was insufficient, without more, to establish the contention of maritime shippers, but that it is necessary to prove some actual or probable destruction of maritime trade or some prejudicial effect thereupon, either heretofore sustained or likely to ensue as a result of such competitive tariffs;

(*d*) In holding that, if rates under such a competitive tariff outside the "select territory" are found to be such as the Board should not approve or allow, under section 8 of the Act, the Board has authority under the Act only to cancel such rates, and has not the authority to adjust or vary rates on the railway lines in the "select territory" by allowing a reduction therein proportionate to the reduction effected by the competitive tariff in the outside territory.

H. GUTHRIE,
Chief Commissioner.

GENERAL ORDER No. 559

In the matter of the General Order of the Board No. 550, dated 3rd February, 1936, permitting the railway companies subject to the jurisdiction of the Board, until further order, direction, or permission of the Board, to issue free transportation only to the persons and subject to the limitations and restrictions, if any, set out in the said Order.

File No. 496.27

TUESDAY, the 1st day of December, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading what has been filed on behalf of the Canadian Pacific Railway company,—

It is ordered: That the said General Order No. 550, dated February 3, 1936, be, and it is hereby, amended by adding the words, "General Order No. 513, dated the 1st day of June, 1933, and General Order No. 513-A, dated the 16th day of June, 1933," after the figures " 1920 " in section 5 of the said order.

H. GUTHRIE,
Chief Commissioner.

SUMMARY OF ORDERS ISSUED BY THE BOARD OF RAILWAY COMMISSIONERS

53651. Nov. 4—Authorizing C.N. Rys. to issue on one day's notice a supplement to tariff C.R.C. No. E-1807 to correct an error in rate on copper from Clara Belle to Copper Cliff, Ont., to make it 25 cents per 100 pounds instead of 35 cents.

53652. Nov. 2—Declaring C.N. Rys. crossing one mile west of Ruthilda Station, Sask., protected to Board's satisfaction.

53653. Nov. 2—Declaring C.P.R. crossing, first east of Dysart Station, Sask., protected to Board's satisfaction.

53654. Nov. 2—Declaring C.P.R. crossing, first east of Hull East Station, Que., protected to Board's satisfaction.

53655. Nov. 2—Authorizing City of Fort William, Ont., to construct two-track subway under C.P.R. and substructure on what was formerly known as James Street, now the property of the C.N. Rys., and to construct approaches to it from Gore Street on north and from Montreal Road on the south.

53656. Nov. 2—Amending Order 52204, Aug. 29, 1935, by striking out figures "$2,850.00" in fourth line of paragraph 2 and substituting therefor the figures "3,135.00"—Overhead bridge over C.N. Rrys. at Fauquier, Ont.

53657. Nov. 2—Authorizing C.N. Rys. to operate under bridge at Third Avenue, Fauquier, Ont.

53658. Nov. 3—Declaring C.P.R. crossing of Convent Street, Drummondville, Que., protected to Board's satisfaction.

53659. Nov. 3—Declaring New York Central R.R. (M.C.R.) crossing of Angle Road, one mile west of Ruscomb, Ont., protected to Board's satisfaction.

53660. Nov. 3—Declaring Pere Marquette Ry. crossing of Elliott Street, Leamington, Ont., protected to Board's satisfaction.

53661. Nov. 3—Authorizing C.P.R. to use and operate bridge No. 21.12 North Bay Subdivision, Ont.

53662. Nov. 2—Amending Order 53452, Sept. 14, 1936, by striking out words "with the intake pipe on the upstream end excavated to that level and carried to intersect the brook channel" in the last two lines of paragraph 5.—Drainage work at Dominion Atlantic Ry. crossing of Dennison Avenue and Mill Brook Bridge, Kentville, N.S.

53663. Nov. 3—Approving and authorizing clearances of shed and tipple located on trackage serving Mohawk Bituminous Mines, Ltd., at Bellevue, Alta.,—C.P.R.

53664. Nov. 2—Directing C.P.R. to install automatic bell and wigwag, in addition to existing bell, at crossing east of Belleville, Ont.

53665. Oct. 30—Approving relocation of station and highway crossing of C.P.R. at Hinchinbrooke, Ont.

53666. Oct. 30—Approving and authorizing clearances at Leavell Coal Co.'s tipple and slack bin at Sheerness, Alta.,—C.N. Rys.

53667. Nov. 4—Confirming abandonment of operation of V.V. & E. Ry. and Nav. Co., between Colebrook and Ladner, B.C., approved by Order 52120, July 31, 1935, subject to condition that period of eighteen months limited by agreement as provided in said Order, be extended for a further period of eighteen months from the date of this Order.

53668. Nov. 4—Authorizing Ont. Dep't Highways to move the crossing of the C.P.R. on lot 17, Con. 11, Tp. Medonte, Ont., to a point 1,550 feet to the south, on lot 16.

53669. Nov. 5—Declaring C.P.R. crossing of College Avenue, one-half mile east of Moose Jaw Station, Sask., protected to Board's satisfaction.

53670. Nov. 4—Declaring C.N. Rys. crossing, first south of Callander Station, Ont., protected to Board's satisfaction.

53671. Nov. 2—Directing C.P.R. to install an automatic bell and wigwag, in addition to existing bell and wigwag, at crossing of Provincial Highway No. 2 (Kingston Road) 2·1 miles west of Belleville, Ont.

53672. Oct. 30—Relieving C.P.R. from fencing certain parts of its right of way between mileage 0 and 101, Wilkie Subd'n, Sask.

53673. Nov. 6—Declaring C.N. Rys. crossing, second west of Sydney Mines, N.S., protected to Board's satisfaction.

53674. Nov. 6—Declaring C.P.R. crossing, first east of Turbine Station, Ont., protected to Board's satisfaction.

53675. Nov. 4—Amending Order 53507, Oct. 1, 1936, by striking out figure "8" after words "Grand Falls, N.B.," in paragraph 1 and substituting therefor the figure "7," and by striking out figures "10" after words "Grand Falls, N.B." in paragraph 2 and substituting therefor the figures "8½"—Maritime Freight Rates.

53676. Nov. 5—Relieving C.P.R. from posting certain tariffs at stations where population is over 1,000 and not over 2,000; and tariffs that are never used at stations where population is over 2,000 and less than 10,000.

63677. Nov. 6—Relieving C.N. Rys. from fencing south side of right of way from mileage 1·5 to 1·9 and from mileage 6·9 to 7·1, Caledonia Subd'n, N.S.

53678. Nov. 6—Relieving C.N. Rys. from certain fencing on its right of way between mileage 1·60 and 22·0 Middleton Subd'n, N.S. (Lunenburg County), and from 26·5 to 67·4 Annapolis County.

53679. Nov. 6—Dispensing with publication in local newspapers application Ottawa & New York for recommendation to Governor in Council for sanction of a lease of its railway to New York Central R.R. for a period of 99 years.

53680. Nov. 6—Declaring C.N. Rys. crossing, first south of Chateau d'Eau station, Que., protected to Board's satisfaction.

53681. Nov. 6—Declaring C.N. Rys. crossing, first east of Authier Station, Que., protected to Board's satisfaction.

53682. Nov. 6—Declaring Lake Erie & Northern Ry. crossing at Bloomsberg, Ont., protected to Board's satisfaction.

53683. Nov. 7—Approving under Maritime Freight Rates Act, sec. 3, subsection 3, joint toll published in item 80-E of Supp. 34 to tariff C.R.C. No. E-1504 filed by C.N. Rys. under sec. 3.

53684. Nov. 9—Dispensing with publication in local newspapers of application of St. Lawrence & Adirondack Ry. for recommendation to Governor in Council for sanction of a lease of its railway to New York Central R.R. for a period of 99 years.

53685. Nov. 7—Directing C.N. Rys. to install bell and wigwag, in lieu of existing bell at crossing of Keene Road, east of Peterboro, Ont.

53686. Nov. 10—Relieving C.N. Rys. from fencing from mile 18·18 to 18·53, Town of Rimouski, south side, and from mile 28·42 to 28·58, Village of Bic, Que., south side.

53687. Nov. 12—Requiring C.N. Rys. forthwith to erect permanent barriers at each end of right of way, between Millbrook Jct., and Omemee Jct., Ont., abandoned, at points where such right of way intersects highway near property of Cairns Bros., and also erect and maintain signs warning persons against trespassing.

53688. Nov. 9—Authorizing C.P.R. to establish and maintain sight lines at crossing eight-tenths of a mile west of Indian River Station, Ont.

53689. Nov. 12—Declaring C.N. Rys. crossing of Melvin Avenue, Sudbury, Ont., protected to Board's satisfaction.

53690. Nov. 12—Authorizing C.N. Rys. to remove station agent at Fire River, Ont., subject to condition that operator remain at said Fire River Station.

53691. Nov. 13—Authorizing Mun. of Pipestone, Man., to construct crossing over C.N. Rys. at Scarth, Man.

53692. Nov. 13—Authorizing Ont. Dep't Highways to construct overhead crossing of C.N. Rys. in Lot 1, Con. 2, N.R. Tp. Bertie, Co. Welland, Ont.

53693. Nov. 14—Declaring C.N. Rys. crossing, first north of Oriole, Ont., protected to Board's satisfaction.

53694. Nov. 13—Authorizing Winnipeg Electric Ry. to relocate certain portions of its automatic half-interlocking plant at crossing over C.P.R. on Academy Road, Winnipeg, Man.

53695. Nov. 14—Declaring C.N. Rys. crossing near Yarbo, Sask., protected to Board's satisfaction.

53696. Nov. 13—Requiring C.N. Rys. to maintain speed limitation of 10 miles an hour at crossing of Church Street, Moncton, N.B., in addition to installation of wigwags and bell.

53697. Nov. 16—Directing C.P.R. to install double bells and wigwags at mileage 59·5, 61·02, 62·00, 66·06, 68·04, 69·31, 71·19, 72·59, 58·39, Three Rivers Subd'n, between Three Rivers and Maskinonge, Que.

63698. Nov. 13—Requiring C.N. Rys. to maintain speed limitation of 10 miles an hour at crossing of St. George Street, Moncton, N.B., in addition to installation of wigwags and bell.

53699. Nov. 16—Requiring C.N. Rys. to maintain speed limitation of 10 miles an hour at crossing of Lutz Street, Moncton, N.B., in addition to installation of wigwags and bell.

53700. Nov. 16—Requiring C.N. Rys. to maintain speed limitation of 10 miles an hour at crossing of Queen Street, Moncton, N.B., in addition to installation of wigwag and bell.

53701. Nov. 16—Authorizing C.P.R. to remove station agent at Valcourt, Que. (caretaker to be appointed).

53702. Nov. 16—Authorizing Kettle Valley Ry. to construct spur to serve Pleasant Valley Mining Co., Ltd., in Lots 232 and 277, Yale Division, Yale District, B.C.

53703. Nov. 16—Approving construction by Alberta Dep't Public Works of crossing over C.N. Rys. in NW¼ Sec. 6-52-20 W4M., at North Cooking Lake, Alta.

53704. Nov. 18—Permitting C.P.R. to cancel upon one day's notice rates named in items 871-A, 872-B, and 873-A of tariff C.R.C. No. E-4734, to correct erroneous cancellation date.

53705. Nov. 19—Directing C.N. Rys. to suitably plank as much of Bethune Street, as lies between their rails, and so much of said street as lies between sidings and main track with a width of 20 feet immediately opposite entrance door to property of Smith Transport Limited, facing upon Bethune Street, Peterboro, Ont.

53706.

53707. Nov. 18—Approving under Maritime Freight Rates Act, sec. 3, subsection 3, tolls published in supplements and tariffs filed by Dominion Atlantic Ry. under sec. 9.

53708.

53709. Nov. 19—Approving under Maritime Freight Rates Act, sec. 3, subsection 3, tolls published in Supp. to tariff C.R.C. No. 743, and tariff C.R.C. No. 750 filed by Temiscouata Ry. under sec. 9.

53710.

53711. Nov. 19—Approving under Maritime Freight Rates Act, sec. 3, subsection 3, tolls published in tariffs and supplements filed by C.P.R. under sec. 9.

53712. Nov. 19—Declaring C.N. Rys. crossing, first west of Bonnyville Station, Alta., protected to Board's satisfaction.

53713. Nov. 20—Declaring Pere Marquette Ry. crossing, first just east of Dresden Station, Ont., protected to Board's satisfaction.

53714. Nov. 19—Declaring C.N. Rys. crossing, first just north of Angus Station, Ont., protected to Board's satisfaction.

53715. Nov. 19—Relieving C.N. Rys. from fencing between mileage 56·4 and 57·5, west side, and between 74·99 and 75·21 east side, Harcourt Subd'n, N.B.

53716. Nov. 20—Requiring C.N. Rys. to reconstruct and maintain farm crossing formerly existing on west half of Lot 558, now owned by Herve Page, in Parish of Laprairie Que.

53717. Nov. 19—Authorizing Alta Dep't Public Works to construct crossing of C.P.R. in northeast angle of SW¼ Sec. 26-49-25 W4W., Leduc, Alta.

53718. Nov. 20—Authorizing Ontario Dep't Northern Development to construct crossing of C.P.R. in Lot 12, Con. 1, at Hagar, Tp. Ratter, Ont.

53719. Nov. 20—Authorizing C.N. Rys. to construct spur for the City of Montreal at Longue Pointe, Que., crossing Souligny Avenue and the C.P.R.

53720. Nov. 20—Refusing application of Fort William Elevator Co., Ltd., for free switching of cars to and from its terminal elevator at Fort William, Ont., from the C.N. Rys. to the C.P.R., and vice versa, and that the cars of one company set out for placing by the switching service of the other shall not be discriminated against.

53721. Nov. 21.—Declaring C.N. Rys. crossing of Sturgeon Street, Omemee, Ont., protected to Board's satisfaction.

53722. Nov. 21—Declaring C.P.R. crossing, first east of Murillo, Ont., protected to Board's satisfaction.

53723. Nov. 23—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in tariff C.R.C. No. 751 filed by Temiscouata Ry. under sec. 9.

53724. Nov. 19—Approving express tariff C.R.C. No. E.T. 700, *re* specifications for containers for transportation by express of acids, inflammables, oxidizing substances, etc.

53725. Nov. 23—Declaring C.N. Rys. crossing, third north of Gravenhurst Station, Ont., protected to Board's satisfaction.

53726.

53727. Nov. 23—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in supplements and tariffs filed by Dominion Atlantic Ry. under sec. 9.

53728. Nov. 23—Approving Supp. 1 to service station contract between Bell Telephone Co. and Muskoka & Parry Sound Telephone Co., Ltd.

53729. Nov. 23—Authorizing C.N. Rys. and Temiscouata Ry. to operate over crossing of their railways near Baker Brook, N.B., without stopping.

53730. Nov. 23—Authorizing City of Regina, Sask., to construct crossing of C.N. Rys. at Regina Avenue, Regina, Sask.

53731. Nov. 24—Declaring C.N. Rys. crossing, second north of Woodstock Station, Ont., protected to Board's satisfaction.

53732. Nov. 23—Declaring C.P.R. crossing about two miles east of Havelock, Ont., protected to Board's satisfaction.

53733. Nov. 23—Approving Supp. 1 to service station contract between Bell Telephone Co. and Victory Telephone Co., Ltd.

53734. Nov. 25—Directing C.N. Rys. to install automatic bell and wigwag at second crossing west of Carp Station, Ont.

53735. Nov. 28—Approving under Maritime Freight Rates Act, sec. 3, subsec. 3, tolls published in tariffs and supplements filed by C.N. Rys. under sec. 3.

53736. Nov. 20—Authorizing Ont. Dep't Northern Development to construct crossing over C.P.R. in Lot 5, Con. V, Tp. Kirkpatrick, Dist. Nipissing, Ont.

53737. Nov. 27—Directing C.N. Rys. to install automatic bell and wigwag at crossing east of Stevensville, Ont.

53738. Nov. 27—Approving and authorizing clearances at C.N. Rys. siding serving Colgate-Palmolive Peet Co., Ltd., at Toronto, Ont.

53739. Nov. 27—Authorizing Ont. Dep't Highways to construct crossing over C.P.R. in Lot 17, Con. 8, Tp. Calvin, Dist. Nipissing, Ont.

53740. Nov. 27—Declaring C.P.R. crossing, second west of Millbank Station, Ont., protected to Board's satisfaction.

53741. Nov. 30—Approving agreement between Bell Telephone Co., and Algoma Central Telephone Co., Ltd.

53742. Nov. 28—Authorizing C.N. Rys. to reconstruct overhead highway bridge at Jones Street, St. Mary's, Ont.

53743. Nov. 28—Authorizing Northern Alberta Rys. to construct crossing of its railway between Lots 64 and 65, Tp. 67-13 W4M., Alta.

53744. Nov. 28—Directing Dominion Atlantic Ry. to contribute $1,000 toward cost of eliminating crossing of its railway at Clementsport, N.S.

53745. Nov. 28—Directing C.N. Rys. to contribute the sum of $2,000 toward cost of eliminating two crossings of their railway at Auld's Cove, N.S.

53746. Nov. 28—Relieving New York Central R.R. from posting certain tariffs at stations where population is over 1,000 and not over 2,000, at stations where population is over 2,000 and not over 10,000 tariffs that are never used need not be posted.

53747. Nov. 28—Refusing application of Tp. Cornwall that its share of cost of maintenance and operation of gates at crossing of G.T.R. 300 yards west of Cornwall Station, Ont., be borne and paid by United Counties of Stormont, Dundas and Glengarry.

53748. Dec. 1—Authorizing Cariboo Mineral Holdings, Ltd., of Victoria, B.C., to construct tunnel under C.N. Rys. main line at mileage 27·6 Yale Subd'n, B.C.

53749. Dec. 1—Authorizing Toronto, Hamilton & Buffalo Ry. to use and operate highway bridge on Dundurn Street, Hamilton, Ont.

53750. Nov. 30—Amending Order 45407, Sept. 9, 1930, by striking out words "Walkerville Suburban Area Commission" and substituting therefor words "Windsor Suburban Area Commission"—Installation of bell and wigwag at C.P.R. crossing of Seventh Concession Road, Tp. Sandwich South, Co. Essex, Ont.

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The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXVI | Ottawa, January 1, 1937 | No. 21

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Application of the Western Canada Flour Mills Company, Ltd., Calgary, Alta., for a Ruling of the Board concerning Demurrage charged against two cars of Oat Middlings held at Cantic, Que., by the Canadian National Railways awaiting Export Entries.

File No. 1700.398.

RULING

By the Board

The Western Canada Flour Mills Company, Limited, Calgary, Alta., asked for a ruling of the Board concerning demurrage charge of $94 assessed against two cars of oat middlings, held at Cantic, Que., by the Canadian National Railways awaiting export entries.

The shipping orders show cars C.P. Nos. 242159 and 220667 billed from Calgary on November 15 and 16, 1935, respectively. Both cars were consigned to the order of J. A. Forrest at Point Edward, Ont., notify J. A. Forrest, Minneapolis, Minn. The shipping bills show J. A. Forrest as shipper at Calgary (per S. Smith, care of Western Canada Flour Mills Company, Limited, which latter information would not, of course, be shown on the waybill, but only the name of the shipper.)

By Item 100 of Canadian National Railways tariff C.R.C. No. E-1694, grain or grain products originating in Western Canada may be consigned to Point Edward with the privilege of reshipment therefrom under the provisions therein set out.

On November 22, General Agent Stubbs of the Canadian National Railways at Minneapolis, upon instructions from J. A. Forrest, wrote the agent at Point Edward directing that he reship the contents of car C.P. No. 242159 to Middletown, Conn., and the contents of car C.P. No. 220667 to St. Albans, Vt.

On shipments originating in Canada, consigned to points in the United States, the shipper is required by the Canadian Customs Regulations to furnish an export entry, which shall be delivered to the collector of customs at the last port in Canada through which the goods pass outwards to the United States. The shipper is further required by the United States authorities to furnish a consular invoice to enable clearance from customs at the United States frontier or at ports of delivery in the United States.

While, when customs requirements are fully understood and promptly complied with and the necessary documents submitted, there is no delay in arranging clearance from customs, at the same time, in practice, it frequently happens

that there is delay through non-compliance promptly with customs requirements, or absence of some of the necessary documents, which involves delay to cars and, consequently, assessment of demurrage. The obligation to fulfil customs requirements and present the necessary documents rests solely upon the owner of the goods; this is not an obligation which, in any way, devolves upon the railway company.

The applicant contends that the railway should assume the responsibility for the delay to these cars and, therefore, no demurrage should have been assessed. It states that there was no intention of delaying the shipments, or storing the goods in railway equipment en route; that the cars should not have been held without request to the shipping agent for export entry; that the agent at Cantic could have wired Calgary to secure this document without holding the cars up one day. It further contends that the agent at Cantic could have made out the export entry, enabling the cars to go forward without delay; also that the railway did not take prompt and efficient action to obtain the export entry.

As we view it, when these cars were reshipped from Point Edward to the United States destinations, Point Edward became the point of origin so far as the agent at Cantic was concerned. In any event, J. A. Forrest was shown as the shipper and J. A. Forrest was shown as the party to be notified and, if the railway advised J. A. Forrest, its obligations concerning notice were fulfilled. Applicant's statement that if agent at Cantic had wired Calgary, the cars would not have been held up one day is not understood. The agent at Cantic could not wire before the cars arrived there and there would, of necessity, have been some days delay in then forwarding the papers and getting them into the hands of the agent at Cantic.

With regard to the applicant's statement concerning the agent at Cantic making out the export entries, a perusal of a specimen copy of this document shows clearly that it has to be made out by the shipper, although the agent of the railway at shipping point may prepare it as agent for the shipper, providing he is furnished with the necessary details called for therein. The customs regulations, as printed on the back of the form, provide that "great care is required to be exercised by the shipper, or his agent, in giving the correct quantities and values" on such export entries. The agent at Cantic states that he had no authority to make out the export entries, nor, in any event, in a position to insert contents, quantities and values correctly.

There is also the applicant's contention that the railway did not take prompt and efficient action to obtain the export entries. On November 25, General Agent Stubbs, Canadian National Railways, Minneapolis, received a telegram from the agent at Point Edward stating that the cars had been reshipped as instructed and to have the customs papers rushed to the border. Mr. Stubbs states that, upon receipt of this wire, J. A. Forrest was advised to that effect. On the same date J. A. Forrest wired applicant "Rebilling C.P. No. 242159 Middletown, Conn., C.P. No. 220667 St. Albans, Vt., please mail customs papers to-day H. M. Allen, St. Albans, Vt." On November 26, the applicant wrote Customs House Broker Allen, St. Albans, as follows:—

> "On instructions from Mr. J. A. Forrest, Minneapolis, we are enclosing herewith Consular Invoices covering two cars of Oat Middlings —C.P.R. 242159 and 220667, both diverted enroute by Forrest and Company."

It will be observed that, through oversight, lack of knowledge of the requirements, or for some reason, the applicant did not also prepare and forward the export entries along with the consular invoices.

The cars arrived at Cantic November 27 and there is summarized below the action taken by the railway, subsequent to that already above referred to, to obtain export entries; Mr. F. A. Rutherford is Superintendent of Transportation, Canadian National Railways, Montreal, Que.; Mr. J. F. Pringle is General

Superintendent of Transportation, Canadian National Railways, Toronto, Ont.; Mr. R. M. Stubbs is General Agent, Canadian National Railways, Minneapolis, Minn.

November 27—

Agent, Cantic, wired Allen, St. Albans, holding cars for *export entries.* "Send them back here if received."

Agent, Cantic, wired Rutherford cars held for *export entries.*

Rutherford wired St. Albans cars held Cantic for export entries. "If papers at St. Albans, please forward Cantic."

St. Albans wired Rutherford papers not at St. Albans.

Rutherford wired Pringle—because cars from Point Edward—giving full particulars and requesting that necessary action be taken.

Pringle wired Point Edward cars held Cantic account no export entry.

Point Edward wired Pringle had taken up with Stubbs, Minneapolis.

Point Edward wired Stubbs stating cars were being held for *export entry.*

November 28—

Pringle wired Stubbs cars held Cantic account no *export entry.*

Point Edward wired Pringle that Stubbs wires *customs* papers mailed Allen, Customs Broker, St. Albans.

Pringle wired Cantic, "Understand customs papers mailed Allen St. Albans." Stubbs states that the wires received from agent at Point Edward on November 27 and from Mr. Pringle on the 28th, stating cars were being held for *export entries* were read to J. A. Forrest over the telephone.

November 29—

Stubbs wired Pringle, "Papers mailed by Western Canada Flour Mills to H. M. Allen, Customs Broker, St. Albans."

Pringle wired this advice to Rutherford.

Rutherford wired this advice to St. Albans and to take up with Allen and advise.

November 30—

St. Albans wired Rutherford papers not yet received by Allen.

December 1—

Sunday.

December 2—

Pringle wired Cantic referring to wire November 28 (see above) and asking if papers received.

Cantic wired Pringle, "No papers received yet."

Rutherford wired Pringle Allen advised papers not yet received.

Pringle wired Stubbs papers not yet received by Allen and to take up and advise further.

December 3—

Stubbs wired Pringle, "Shippers mailed papers November 26."

Pringle wired, in reply to Stubbs, "Papers not yet received. Suggest you have copies mailed at once."

December 4—

Cantic wired Allen again to forward export entries if received.

Rutherford wired St. Albans to advise if papers now received by Allen.

St. Albans wired Rutherford "Mr. Allen received U.S. papers for these two cars this a.m., but no Canadian papers received here."

Rutherford wired this advice to Pringle.

Pringle repeated this advice in wire to Stubbs and asked him to take up and advise.

December 5—

Cantic wired both Rutherford and Pringle that cars still held and no export entries received.

Pringle wired Rutherford had again asked shippers to supply papers.

Pringle wired Stubbs, referring to wire of December 4 (see above) and to advise.

Stubbs wired Pringle, "Forrest here wired Western Canada Flour Mills to mail papers immediately."

December 6—

Pringle wired contents Stubbs' wire to Rutherford, also to Cantic.

Rutherford wired this advice to Cantic.

December 7—

Pringle wired Cantic asking if papers now received.

Cantic wired Pringle papers not received.

December 8—

Sunday.

December 9—

Pringle wired Stubbs papers not yet received.

Cantic wired Pringle and Rutherford papers not yet to hand.

December 10—

Further wires between the parties above named and communication from Allen to agent, Cantic, enclosing export entries which he had just received from Western Canada Flour Mills Company, Calgary.

December 11—

Cantic wired Pringle and Rutherford, "Export Entries received from St. Albans 11 p.m. last night, cars released and forwarded this a.m. on 490. Held 27th to 10th."

Insofar as concerns wires exchanged between J. A. Forrest and applicant, it is noted that, on December 2, Forrest wired applicant Allen advises papers not received. Applicant wired Forrest same date "Consular Invoices mailed 26th; copy letter sent your office." On December 3, Forrest wired applicant to mail "Duplicate Customs Papers" to Allen, St. Albans. On December 4, applicant wrote Forrest that duplicates were forwarded, but these were only duplicate consular invoices, which were not required, and not the export entries. On December 5, Forrest wired applicant that Allen had received United States customs papers, but no export entries, and requested that they mail export entries that date. This was done by applicant and the documents received at St. Albans on December 10.

Upon the record, as above summarized, and also having consideration for the obligation that rested upon the shipper with respect to the furnishing of these documents, we do not consider the responsibility for the delay to these cars can be placed upon the railway, consequently, under the provisions of the Canadian Car Demurrage Rules, demurrage was properly assessable for the delay in furnishing the necessary documents.

December 1, 1936.

Application of Mr. John Brisco, Renfrew, Ont., for the construction of a cattle-pass under the line of the Canadian Pacific Railway, on Lot 28 or 29, North Bonnechere Range, Township of Admaston, County of Renfrew.

(File No. 39997)

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER:

This application was heard at Ottawa on 9th day of December, 1936, in the presence of counsel for the applicant and of counsel for the Canadian Pacific Railway Company.

The applicant is the owner of lots 28 and 29, in the North Bonnechere range, township of Admaston, in the county of Renfrew. The Canadian Pacific Railway was constructed across both of these lots over 40 years ago. The right of way was originally acquired by the railway company from Christopher Crozier under a conveyance dated October 7, 1892, and duly registered in the Registry office for the county of Renfrew. This conveyance purports to have been made "in consideration of the cattle-pass hereinafter mentioned and of two hundred dollars" paid by the railway company to the grantor. In and by the terms of this conveyance the railway company agreed to construct and maintain a cattle-pass under their tracks at station 226 on said lands. Christopher Crozier subsequently conveyed the lands to the father of the present owner, who afterwards conveyed them to the applicant, and the applicant now owns and occupies both of said lots as a farm property. No cattle-pass has ever been constructed by the railway company under the terms of the said agreement, but during the ownership of Christopher Crozier a farm crossing was constructed by the company and has since been maintained by the company close to the eastern boundary of said property. Applicant's farm is severed by the railway right of way, his house and farm buildings being on the north side of the company's track while a considerable portion of the farm lies to the south of the railway track running down to the Bonnechere river, and upon the south side of the track there is a good deal of timber as well as pasture land. In his farming operations the applicant maintains a herd of from 40 to 60 head of cattle. At the present time he has 60 head upon his farm, and from time to time these cattle are pastured on the land which lies south of the railway track. Under present circumstances they have to be driven daily across the farm crossing on the easterly side of the farm to the pasture land, and in dry seasons they have to be driven daily back to the barns for water. The applicant states that if he had a cattle-pass under the railway track, he would save at least an hour's work per day in the driving of his cattle to and from pasture.

It was admitted by counsel for the railway company that no cattle-pass had ever been constructed upon the property, nor was it possible at this date to give any reason why the work had not been carried out as provided in the deed. Counsel for the company urged very strongly that the particular agreement or covenant in the deed was not a covenant running with the land and that, therefore, the railway company was under no obligation to the present owner to construct a cattle-pass. In support of his contention counsel for the railway company cited a number of authorities upon the subject of covenants running with the land from p. 379, 2nd Edition of Armour on Real Property.

During the hearing a discussion took place as to the size and cost of a cattle-pass in the event of one being ordered by the Board. The railway company submitted that a pass 4 feet wide and 6 feet high would be sufficient as a cattle-pass, and would cost about $900. But it was objected by the applicant that these dimensions would not permit the free passage of cattle through the pass

and after some discussion it seemed to be accepted between the parties that a cattle-pass 4 feet wide by 7 feet high would be sufficient for the passage of cattle under the right of way. The applicant was asked whether he would accept an undercrossing convenient and proper for farm purposes, as mentioned in section 272 of the Railway Act, which might result in the closing of the present farm crossing on the easterly side of his farm. He stated that he would agree to the closing of the present farm crossing, if the undercrossing were made large enough for the passage of loads of hay, timber and farm implements, as well as for cattle. This would involve an undercrossing of about 8 feet in width and from 10 to 12 feet in height, and it was at once pointed out by the representative of the railway company that such a crossing would involve a fairly heavy expenditure. It was intimated on behalf of the railway company that if the Board were to decide that a cattle-pass be constructed, the company would much prefer to erect a crossing 4 feet wide and 7 feet high and maintain the present farm crossing, rather than construct an undercrossing of 8 by 12 feet to accommodate all the traffic usual upon farm property. The applicant was prepared to agree to this proposal and stated that, if the present farm crossing were maintained, he would be quite satisfied with an undercrossing 4 feet in width by 7 feet in height.

Whatever be the strict legal effect of the covenant contained in the above mentioned deed, there is no doubt that there is a very strong moral obligation upon the railway company to construct a cattle-pass upon this property. In the case of Crozier v. C.P.R. Co., reported at p. 157, 28 C.R.C., the Board decided that the right in respect of farm crossings is not a right related to the time of the construction or to the individual owning the land when the railway was constructed, but it is a right running with the land and is not affected by lapse of time. In the Crozier case there was no agreement between the original owner and the railway company as to the maintenance of a cattle-pass, but the Board held that a subsequent owner was entitled to an opening convenient and proper for the purpose of a cattle-pass. The authorities upon the subject are collected and considered in the Crozier case, and following the principles laid down in that case the Board must hold in the present case that the applicant is entitled to have a cattle-pass constructed under the railway upon his property. It may be that the applicant is not entitled to have both a cattle-pass and a farm crossing. When this was pointed out to him and was discussed by both parties at the hearing as above mentioned, it seemed to be the opinion of both parties that the best solution of the difficulty would be the construction of a cattle-pass 4 feet by 7 feet and the maintenance of the present farm crossing in addition thereto. While the representative of the railway company did not consent to this proposal, I consider that it would be a fair and equitable disposition of the matter. However, General Order of the Board No. 325 provides that cattle-passes be at least 5 feet in width and I think that in this case the pass should be at least 5 feet in width. I think the Board should make an order that the railway company should on or before May 15th next construct, at its own expense, a suitable cattle-pass 5 feet in width and 7 feet in height, at the point shown in red upon the plan filed, and should maintain same in the future; and also that the present farm crossing on Lot 28 should be continued and maintained by the railway company as heretofore.

December 10, 1936.

The Assistant Chief Commissioner and Commissioner Stoneman concurred.

ORDER No. 53797

In the matter of the application of John Brisco, Renfrew, Ontario, hereinafter called the "Applicant," for the construction of a cattle-pass under the line of the Canadian Pacific Railway Company, on Lot 28 or 29, North Bonnechere Range, Township of Admaston, County of Renfrew, and Province of Ontario.

File No. 39997

FRIDAY, the 11th day of December, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at a sitting of the Board held in Ottawa on the 9th day of December, 1936, in the presence of the applicant and of counsel for the railway company, and what was alleged,—

It is ordered:

1. That on or before the 15th day of May, 1937, the Canadian Pacific Railway Company construct and maintain, at its own expense, a cattle-pass 5 feet wide and 7 feet high under its railway on applicant's farm, on lot 29, North Bonnechere range, township of Admaston, county of Renfrew, and province of Ontario, at the point shown in red on the plan filed with the Board.

2. That the railway company continue to maintain, at its own expense, the farm crossing now existing on the easterly side of applicant's farm.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53770

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and the Orders of the Board numbered 50809 and 50876, dated respectively March 3, 1934, and March 19, 1934.

File No. 34822.12

THURSDAY, the 10th day of December, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published from Bridgetown, Middleton, and Yarmouth, Nova Scotia, to Chelmsford and Chapleau, Ontario, and stations on the Webbwood and Thessalon Subdivisions, in Tariff C.R.C. No. E-4324, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls from Bridgetown, Middleton, and Yarmouth, Nova Scotia, for the purpose of reimbursement under

subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. E-4324, approved herein, are as follows:—

Index No.	To	Rate Bases, in Supplement No. 51 to C.P.R. Tariff C.R.C. No. E-3221 From Bridgetown, N.S.	Middleton, N.S.	Yarmouth, N.S.
1435	Chelmsford, Ont.		96	100
1464	Chapleau, Ont.		118	122
1581 to 1587	Copper Cliff, Ont. to Nairn, Ont.		86	90
1589	Espanola, Ont.		88	94
1590	Webbwood, Ont.			
1592 to 1594	Massey, Ont. to Spanish, Ont.		88	92
1595 to 1601	Cutler, Ont. to Algoma, Ont.		90	92
1602 to 1605	Blind River, Ont. to Dean Lake, Ont.		90	92
1607 to 1615	Dayton, Ont. to Desbarats, Ont.		92	96
1616 to 1621	Isbester, Ont. to Sault Ste. Marie, Ont.		92	96

One and one-half cents per 100 pounds to be deducted on account of water haul.

3. And the Board orders that the said orders numbered 50809 and 50876, dated respectively March 3, 1934, and March 19, 1934, be, and they are hereby, rescinded.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53805

In the matter of the application of the New York Central Railroad Company and the Michigan Central Railroad Company (the New York Central Railroad Company Lessee), hereinafter called the "Applicant Companies," under Section 342 of the Railway Act, for relief from posting certain tariffs at stations at which the population is not over 2,000 and at stations at which the population is over 2,000 and not over 10,000.

File No. 39362

WEDNESDAY, the 16th day of December, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered and declared:

1. That the applicant companies be, and they are hereby, relieved from posting tariffs to the following extent, namely:—

(*a*) That at stations at which the population is not over 2,000, only the Canadian Freight Classification, Standard and Local Specific Class

Tariffs, and such other tariffs as are frequently used be posted; and that other tariffs for the use of agents at such stations be posted in the office of the Division Freight Agent in charge of that territory.

(*b*) That at any stations at which the population is over 2,000 and not over 10,000 tariffs that are never used need not be posted.

2. That if it is found by certain agents that tariffs required for occasional or isolated shipments are not posted, the required information can be secured by them by telegraph from the Division Freight Agents in charge of the district.

3. That, in the event of any tariff not on file at a station being required on account of frequent movement, or if any shipper requests that a tariff be posted at a particular station, such tariff shall immediately be placed on file at that station.

4. That this order is subject to amendments or revision in the event of such action appearing necessary in the public interest.

5. That the Order of the Board No. 53746, dated November 28, 1936, made herein, be, and it is hereby, rescinded.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53803

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 17th day of December, A.D., 1936.

HON. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published to Peasley, Que., Islington, Don, Mount Dennis and Weston, Ont., and Noranda and Rouyn, Que., in Section "A," also to Montreal in Section "B," item 110-G, as published in Supplement No. 12 to tariff C.R.C. No. E-4316, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said supplement No. 12 to tariff C.R.C. No. E-4316, are:

To		Cents Per 100 Pounds
Peasley, Que.		31½
Islington, Ont.		52½
Don, Ont.		
Mount Dennis, Ont.		
Weston, Ont.		
Noranda, Que.		81½
Rouyn, Que.		
From	**To**	
Fredericton, N.B.	Montreal, Que.	24½
Saint John, N.B.	Montreal, Que.	25½
St. Stephen, N.B.	Montreal, Que.	24

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53804

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 17th day of December, A.D., 1936.

HON. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in items 475-C, 675-E, 2115 and 2738-B, of Supplement No. 27 to tariff C.R.C. No. E-4775, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said items 475-C, 675-E, 2115 and 2738-B of Supplement No. 27 to tariff C.R.C. No. E-4775, are:

Item	To	Cents Per 100 Pounds	
475-C	Kingston, Ont.	32	
	Toronto, Ont.	31½	
675-E		Min. Wt. 24,000 Lbs.	Min. Wt. 60,000 Lbs.
	Edmundston, N.B.	29½	27
	Fredericton, N.B.	14½	..
	St. Stephen, N.B.	..	15
2115		6½	
		Min. Wt. 30,000 Lbs.	Min. Wt. 40,000 Lbs.
2738-B	Perth Jct., N.B.	30	..
	Woodstock, N.B.	..	20

H. GUTHRIE,
Chief Commissioner.

GENERAL ORDER No. 560

In the matter of the application of The Bell Telephone Company of Canada, under Section 372 and all other relevant sections of the Railway Act, for an Order approving, in principle, for general application the joint use of poles by agreement between the parties in accordance with the terms, conditions and specifications embodied in such agreement.

File No. 31142.3

THURSDAY, the 10th day of December, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading the application and what has been filed in support thereof, and upon the report and recommendation of the Electrical Engineer of the Board,—

It is ordered as follows:

1. That subject to the terms and conditions of this order and with the consent of the party owning, operating or controlling the poles or other such

structures hereinafter mentioned, telephone, telegraph and electric power corporations within the legislative authority of the Parliament of Canada may erect and maintain their lines, plant and facilities upon the poles and other such structures of each other and upon the poles and other such structures of other telephone, telegraph, communication, electrical power, signal service, electric railway corporations, municipal corporations and of all other persons, corporations and commissions which operate or maintain pole lines or other such structures for the purposes of their undertakings, upon the terms and conditions hereinafter set forth.

2. That subject to the terms and conditions of this order telephone, telegraph and electric power corporations within the legislative authority of the Parliament of Canada may permit and consent to the erection and maintenance upon their poles and other such structures of the lines, plant and facilities of other telephone, telegraph, communication, signal service, electrical power, electric railway corporations, municipal corporations, and all other persons, corporations and commissions which may desire to place their lines and facilities on such poles or structures for the purpose of their undertakings, upon the terms and conditions hereinafter set forth.

3. The erection and maintenance by any of the persons, corporations or commissions hereinbefore described of their lines, plant and facilities upon the poles or other such structures owned, operated or controlled by another such person, corporation or commission, hereinafter referred to as "Joint Use," as authorized by this order, shall be subject to the following terms and conditions, which shall apply and be observed during the continuance thereof, namely:—

(*a*) Such joint use shall be effected only in pursuance of and upon the terms contained in an agreement in writing entered into and executed by the parties concerned in such joint use.

(*b*) Such agreements may contain such terms, conditions and specifications not inconsistent with those hereinafter set forth, as the parties thereto deem necessary, desirable and applicable.

(*c*) Each such agreement, or the specifications made part thereof, shall contain the provisions stated in Articles (*d*) and (*e*) immediately following which shall be strictly adhered to in both the construction and maintenance of the facilities erected on jointly used poles.

(*d*) That the relative levels at which lines, wires, cables and other longitudinal conductors are located on the poles shall, where practicable, be as follows:—

Highest Level	(*a*)	Supply Conductors (except group (*c*)).
Next Level	(*b*)	Communication Conductors.
Lowest Level	(*c*)	Trolley Contact Conductors and feeders, where it is not feasible to place them above group (*b*).

Appurtenances of each class of service shall occupy the same general level on the poles as that taken by the conductors with which they are associated except in those cases in which the parties concerned have agreed that it is technically infeasible to do this.

(*e*) That adequate and safe clearances shall be maintained between supply and communication conductors on the same poles, such clearances being not less than those recited below:—

Between Supply and Communication Conductors.

	Supply Circuit Voltages	
	0-8000	*Over 8000*
Vertical Clearance..	40 inches	60 inches

NOTE: Metal sheathed supply cables of any voltage may be erected with clearances of 40 inches if the sheaths of the cables are permanently and effectively grounded.

Appurtenances associated with supply and communication conductors shall have the same clearances as the conductors, except that crossarm braces are not considered to be appurtenances if these braces are separated by at least 1 inch from metal parts of other appurtenances. Span wires for trolley conductors and lamp brackets are excepted from these requirements.

4. The parties to any such agreement for Joint Use may embody therein such terms and conditions governing, as between themselves, their respective liability to each other, or to third parties, who may be affected by such Joint Use, and where any such agreement so provides, then notwithstanding the provisions of General Orders numbers 291 and 490, all liability for damages and/or injuries arising out of the Joint Use of poles and facilities in pursuance of such agreement shall, as between the parties thereto, be governed by the terms and provisions of said agreement, so far as they extend thereto.

5. That this order shall be read and construed as binding only upon the parties to any such agreement for the Joint Use of poles and facilities.

H. GUTHRIE,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR OCTOBER, 1936

Railway accidents	194,	with 17 persons killed	and 190 injured.
Railway accidents at highway crossings	26,	with 9 persons killed	and 50 injured.
	220	26	240

	Killed	Injured
Passengers	—	21
Employees	6	149
Others	20	70
	26	240

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents	
	Nova Scotia
1	Automobile—Auto driver disregarded crossing bell. Licence N.S. 71-312.
1	Auto Truck—Failed to see or hear train. Licence N.S. 15-516.
1	Horse-drawn Vehicle—Attempted to beat train.
	New Brunswick
1	Automobile—Excessive speed; ran into side of train. Licence N.B. W-1800.
	Quebec
2	Automobile—Failed to stop for crossing. Licences Que. 37515, 85122.
2	Auto Truck—Failed to stop for crossing. Licences Que. F-1282, Ont. 51886C.
	Ontario
1	Automobile—Auto stopped clear of crossing; struck by another auto and pushed into side of train. Licence Ont. NS-803 (H. F. Hunter, 2 Kingston road, Toronto).
3	Automobile drove on to crossing in front of train. Licences: Ont. HP-330 (J. Hickey, Downeyville P.O., Ont.); Ont. BZ-68 (no name or address given); Ont. H-2211 (no name or address given).
3	Automobile—Auto ran into side of train. Licences: Ont. HT-762 (no name or address given); Ont. OZ-512 (C. Mueller, Hamilton); Ont. V-1159 (J. W. Sands, Paincourt, Ont.).
1	Automobile—Auto driver disregarded bell and wigwag signals. Licence Ont. OH-864 (Frank Collins, West Lorne, Ont.).
1	Auto Truck—Stalled or brought to stop on crossing. Licence Ont. 61720-C (A. Grosse, North Bay, Ont.).
1	Horse-drawn Vehicle—Horse unmanageable; ran on to crossing in front of train.
1	Auto Truck—Reckless driving on part of truck driver. Licence Ont. 73-265-C (G. Palamides, Windsor).
1	Auto Truck—Defective brakes. Licence Ont. 35-880-C (D. C. Sniveley, Waterford, Ont.).

MANITOBA

1 Automobile—Failed to take precaution; drove on crossing in front of train. Licence Man. T-108.

SASKATCHEWAN

1 Automobile—Ran on to crossing in front of train and was struck. Licence Sask. 79-013.
1 Automobile—Ran into side of train; reckless driving. Licence Sask. 60-397.
1 Pedestrian—Boy standing too close to train and endeavouring to touch it.

ALBERTA

1 Automobile—Failed to hear or see train; drove on to crossing and was struck. Licence Alta. 757.
1 Horse-drawn Vehicle—Section crew failed to comply with instruction to stop before passing over crossing.

Of the twenty-six accidents at highway crossings, twenty-two occurred at unprotected crossings and four at protected crossings. Fourteen of the accidents occurred during the daylight hours and twelve at night.

December 19, 1936.

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The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXVI | Ottawa, January 15, 1937 | No. 22

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ORDER No. 53806

In the matter of the application of the Trans-Continental Freight Bureau, hereinafter called the "Applicant," for permission to make correction, on less than statutory notice, in the rates on silk from Pacific Coast territory to points in Eastern Canada.

File No. 27612.146

MONDAY, the 21st day of December, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant be, and it is hereby, granted leave to issue a supplement forthwith to its Tariff C.R.C. No. 675, revising the rates on silk from Pacific Coast ports, upon five days' notice; the title page of the supplement to bear a note to the effect that it is issued under the authority of this order.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53807

In the matter of the application of the Canadian National Railways (Lines West Fort William, Ont., Armstrong, Ont., and East thereof), hereinafter called the "Applicants," for permission to make corrections on less than statutory notice in the minimum rates per 100 pounds on commodities, in mixed carloads, from Montreal, Quebec, and from Quebec, Quebec.

File No. 27612.147

MONDAY, the 21st day of December, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicants be, and they are hereby, granted leave to issue a supplement forthwith to their Tariff No. C.N. 273-1, C.R.C. No. E.2493, correcting errors in the minimum rates per 100 pounds on commodities, in mixed carloads, from Montreal, Quebec, and from Quebec, Quebec, on one day's notice; the title page of the supplement to bear a note to the effect that it was issued under the authority of this order, to correct clerical errors.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53821

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 24th day of December, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 16 to Tariff C.R.C. No. E-4324 filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Supplement No. 16 to Tariff C.R.C. No. E-4324 are those in cents per 100 pounds where given in this order, or those shown for rate bases given below and published in Canadian Pacific Railway Supplement No. 47 to Tariff C.R.C. No. E-3224 or Supplement No. 51 to Tariff C.R.C. No. E-3221.

Index No.	To	
398 a	Peasley, P.Q.	Same normal rates as to Racine, P.Q.
936 A	Don, Ont	Same normal rates as to Toronto, Ont.
936 B	Mt. Dennis, Ont.	
936 C	Islington, Ont.	
936 D	Weston, Ont.	
5000	Digby Wharf, N.S.	Same normal rates as to and from Digby, N.S.
3160	Niagara-on-the-Lake, Ont.	From Middleton and Bridgetown, N.S.

Classes	1	2	3	4	5	6	7	8	9	10
(In cents per 100 pounds)	141	124½	106½	88	70½	67	50	51	–	47½

Index No.	To	Rate Bases From: Saint John, N.B.	Halifax, N.S.	Middleton, N.S.	Bridgetown, N.S.	Yarmouth, N.S.	Riviere du Loup, Que.
860	Quyon, Que.						
862	Maryland, Que.	58	60	70	70	76	54
864	Shawville, Que.						
1645	Anderson Lake Ont. to	76	78	88	88	92	72
1659	McGregor Bay, Ont.						
1661	Turner, Ont.						
1663	Little Current, Ont.	78	80	90	90	92	74
3152	Black Creek, Ont.						
3154	Chippawa, Ont.	..	..	..	..	..	64
3158	St. Davids, Ont.	..	..	..	..	..	64
3160	Niagara-on-the-Lake, Ont.	68	70	..	..	86	..
3350	Kirkland Lake, Ont.						
3352	King Kirkland, Ont.	102	104	116	116	120	96
3354	Crystal Lake, Ont. to	104	106	118	118	122	100
3374	Boischatel, P.Q.						
3376	Rouyn, P.Q.	104 A					
3378	Noranda, P.Q.	100 B	102	112	112	118	90
3750	St. Lambert, P.Q. to	56	..	..	..	..	..
3778	Gerard, P.Q.						
3780	St. François du Lac, P.Q. to	56	..	..	..	..	..
3784	La Baie, P.Q.						
3810	St. Robert, P.Q. to	56	..	..	..	..	..
3820	St. Hyacinthe, P.Q.						

A—Local.
B—Competitive.

Index No.	Between	And	Rate Base
221	Martin, N.B.	Halifax, N.S.	54
1	Saint John, N.B.	Pennlyn, N.B.	38 a
2	Fairville, N.B.	Cumberland Bay, N.B.	36 a
3	South Bay, N.B.	Granville, N.B.	36 a
100	Bay Shore, N.B.	Young's Cove Road, N.B.	34 a
101	West Saint John, N.B.	Bagdad, N.B.	32 a
		Washademoak, N.B.	32 a
		Cody, N.B.	32 a
		Thompson, N.B.	30 a
1	Saint John, N.B.	Perry, N.B.	30 a
2	Fairville, N.B.	Thorne, N.B.	30 a
3	South Bay, N.B.	Annidale, N.B.	28 a
100	Bay Shore, N.B.	Scotch Settlement, N.B.	28 a
101	West Saint John, N.B.	Belleisle, N.B.	26 a
		Case, N.B.	24 a

1½ cents per 100 pounds to be deducted account of water movement on traffic between Dominion Atlantic stations and points beyond Saint John.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53822

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 24th day of December, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 20 to Tariff C.R.C. No. E-4368, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Supplement No. 20 to Tariff C.R.C. No. E-4368, approved herein, are as follows:—

Item No.	
93	4th Class rate in effect prior to July 1st, 1927.
121	$20.80 per ton of 2,000 pounds; 30 cents per ton of 2,000 pounds to be deducted on account of water movement.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53823

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 24th day of December, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. E-4795, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Tariff C.R.C. No. E-4795, approved herein, are as follows:—

From	Cents per 100 pounds
Bonny River, N.B.	4½
Lepreaux, N.B.	3
New River, N.B.	3
Pennfield, N.B.	4
Pocologan, N.B.	4

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53824

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 24th day of December, A.D. 1936.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in Item 226-C from Burton's, N.S., to Halifax, N.S., in Supplement No. 34 to Tariff C.R.C. No. 906, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Item 226-C, from Burton's, N.S., to Halifax, N.S., in the said Supplement No. 34 to Tariff C.R.C. No. 906, approved herein, is 8 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53848

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

MONDAY, the 4th day of January, A.D. 1937.

Hon. HUGH GUTHRIE. K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

It is ordered: That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement No. 1 to Tariff C.R.C. No. E-2483.
Supplement No. 3 to Tariff C.R.C. No. E-2097.
Supplement No. 1 to Tariff C.R.C. No. E-2453.
Supplement No. 65 to Tariff C.R.C. No. E-1804.
Supplement No. 28 to Tariff C.R.C. No. E-1974.
Supplement No. 37 to Tariff C.R.C. No. E-1829.
Supplement No. 33 to Tariff C.R.C. No. E-1258.
Supplement No. 2 to Tariff C.R.C. No. E-1911.
Supplement No. 36 to Tariff C.R.C. No. E-1504.
Supplement No. 21 to Tariff C.R.C. No. E-2047.
Supplement No. 5 to Tariff C.R.C. No. E-2311.
Supplement No. 42 to Tariff C.R.C. No. E-1247.
Supplement No. 66 to Tariff C.R.C. No. E-1804.
Supplement No. 19 to Tariff C.R.C. No. E-1233.
Supplement No. 26 to Tariff C.R.C. No. E-1906.
Supplement No. 33 to Tariff C.R.C. No. E-1911.
Supplement No. 2 to Tariff C.R.C. No. E-2474.
Supplement No. 35 to Tariff C.R.C. No. E-1258.
Supplement No. 35 to Tariff C.R.C. No. E-1911.
Supplement No. 1 to Tariff C.R.C. No. E-2428.
Supplement No. 37 to Tariff C.R.C. No. E-1504.
Supplement No. 7 to Tariff C.R.C. No. E-2444.
Supplement No. 27 to Tariff C.R.C. No. E-2248.
Supplement No. 34 to Tariff C.R.C. No. E-1911.
Supplement No. 28 to Tariff C.R.C. No. E-1239.
Supplement No. 4 to Tariff C.R.C. No. E-2448.
Supplement No. 38 to Tariff C.R.C. No. E-1829.
Supplement No. 22 to Tariff C.R.C. No. E-2047.
Supplement No. 43 to Tariff C.R.C. No. E-1247.
Tariff C.R.C. No. E-2497.
Tariff C.R.C. No. E-2500.
Tariff C.R.C. No. E-2508.
Tariff C.R.C. No. E-2515.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53849

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.8

MONDAY, the 4th day of January, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 55 filed by the Sydney and Louisburg Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 55, approved herein, is 6 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53850

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 4th day of January, A.D. 1937.

Hon. HUGH GUTHRIE. K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the tolls published in Items Nos. 47 and 56 of Supplement No. 5 to Tariff C.R.C. No. 986, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company to report its proportion of tariff tolls as shown below.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal tolls, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Items Nos. 47 and 56 of Supplement No. 5 to Tariff C.R.C. No. 986, approved herein, is as follows:—

Item No.		Cents per 100 pounds Tariff	Normal
47		24.1	29.8
56	To Middleton, N.S.	23.8	29.8
	Aylesford, N.S.	22.0	26.0
	Berwick, N.S.	24.0	30.0
	Waterville, N.S.	32.9	40.0
	Kentville, N.S.	32.9	40.0
	Wolfville, N.S.	32.8	40.4
	Kingsport, N.S.	33.1	39.7

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53851

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

MONDAY, the 4th day of January, A.D. 1937.

Hon. HUGH GUTHRIE. K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 752, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 752, approved herein, is 4 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53852

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

MONDAY, the 4th day of January, A.D. 1937.

Hon. HUGH GUTHRIE. K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 753, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 753, approved herein, is 2½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR NOVEMBER, 1936

Railway accidents	163, with	14 persons killed and	164 injured.
Railway accidents at highway crossings	26, with	8 persons killed and	35 injured.
	189	22	199

	Killed	Injured
Passengers	—	16
Employees	7	134
Others	15	49
	22	199

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents	
	Nova Scotia
1	Automobile—Auto ran into side of train. Licence N.S. 62650.
	New Brunswick
1	Automobile—Auto ran into side of train. Licence N.B. W-4883.
	Quebec
1	Automobile—Auto skidded into side of train. Licence N.H. 12720.
1	Auto Truck—Truck ran into side of train. Licence Que. T-759.
2	Automobile—Driver failed to stop for crossing. Licences: Que. T-1919, Que. T-1854.
1	Auto Truck—Driver failed to stop for crossing. Licence Que. L-3005.
	Ontario
1	Automobile—Excessive speed; drove on to crossing in front of train. Licence Ont. Y 8182 (Mr. Lauster, 16 Highland road, Toronto).
1	Auto Truck—Excessive speed; skidded into side of train. Licence Ont. 44-423 C (John Ritchie).
3	Automobile—Auto ran into side of train. Licences: Ont. N.L.-63 (A. R. Taylor); Ont. DN-911 (no name or address given); Ont. OD-180 (Robt. Ney, Cookstown, Ont.).
2	Auto Truck—Trucks ran into side of train. Licences: Ont. 56-022 C (L. Gosselin, Ft. Frances, Ont.); Ont. 2-797 C (G. Vanderberg, jr., Ft. Frances, Ont.).
1	Automobile—Driver attempted to beat train. Licence Ont. D-4163 (W. J. Ayers).
1	Auto Truck—Driver attempted to beat train. Licence Ont. 42-782 (Carl Pietrashke).
1	Auto Truck—Driver disregarded bell and wigwag. Licence Ont. 4907 (Manley Dawson, Kingsville, Ont.).
1	Automobile—Driver failed to take precautions; drove on to crossing in front of train and was struck. Licence Ont. LC-402 (Fred Myers).
1	Auto Truck—Driver failed to take precautions; drove on to crossing in front of train and was struck. Licence Ont. 19-156 C (no name or address given).
1	Auto Truck—Unable to stop; skidded on to crossing in front of train. Licence Ont. 43-131 C (C. A. Fleet).
1	Automobile—Driver failed to see or hear train; drove on to crossing and was struck. Licence Ont. S-3159 (Geo. White, Woodstock, Ont.).
	Manitoba
1	Auto Truck—Drove on to crossing in front of train. Licence Man. T-9693.
	Saskatchewan
1	Automobile—Driver failed to see train; drove on to crossing and was struck. Licence Sask. 30-408.
	Alberta
1	Automobile—Attempting to avoid collision with train, turned car into ditch and overturned. Licence Alta. C-7-078.
1	Pedestrian—Boy playing in railway yards, run over by train.
	British Columbia
1	Automobile—Automobile ran into side of train. Licence B.C. 68-843.

Of the twenty-six accidents at highway crossings, twenty-three occurred at unprotected crossings and three at protected crossings. Eleven of the accidents occurred during the daylight hours and fifteen at night.

January 5, 1937.

SUMMARY OF ORDERS ISSUED BY THE BOARD OF RAILWAY COMMISSIONERS

53751. Dec. 2—Authorizing Nova Scotia Dep't Highways to divert Trans-Canada Highway to cross C.N. Rys. a short distance to west of existing crossing at McIntyre Lake, N.S.

53752. Dec. 2—Authorizing Nova Scotia Dep't Highways to construct crossing over C.N. Rys. about 1,385 feet southwest of existing crossing near Hebbville, N.S.

53753. Dec. 2—Authorizing Ontario Dep't Highways to construct crossing over C.P.R. at mileage 7·61 Ignace Subd'n, Ont.

53754. Dec. 2—Authorizing Alta. Dep't Public Works to divert Calgary-Edmonton Highway from Ponoka to a point in NE¼ Sec. 27-43-25 W4M., and close two crossings of C.P.R. at mileage 36·38 and 38·52.

53755. Dec. 2—Amending Order No. 53425, Sept. 8, 1936, by striking out paragraph 2 and substituting therefor clause directing that 70% of cost of work be paid out of Railway Grade Crossing Fund, not exceeding $1,225, remainder to be divided equally between Tp. of Mono and C.P.R.—Widening of approaches to C.P.R. crossing at mileage 2·19 Owen Sound Subd'n, in Tp. Mono, Ont.

53756. Dec. 3—Declaring Michigan Central R.R. crossing of Talbot street, Essex, Ont., protected to Board's satisfaction.

53757. Dec. 3—Granting leave to Province of Nova Scotia, et al, to appeal to Supreme Court of Canada from judgment of Board dated Jan. 3, 1936, *re* rates on potatoes.

53758. Dec. 4—Authorizing C.N Rys. and Montreal and Southern Counties Ry. to operate over crossing of their railways at Ranelagh, Que.

53759. Dec. 3—Requiring C.N. Rys. to construct a farm crossing on property of Emile Lazure in Lot 36, Con. of St. Regis, Parish of St. Isidore, Co. Laprairie, Que.

53760. Dec. 4—Declaring C.N. Rys. crossing, first south of St. Michel Station, Que., protected to Board's satisfaction.

53761. Dec. 4—Declaring C.N. Rys. crossing of Russell street, Lindsay, Ont., protected to Board's satisfaction, so long as speed limitation of 10 miles an hour is in effect.

53762. Dec. 4—Approving proposed relocation of C.N. Rys. station and freight shed building opposite Plessis street, Nicolet, Que.

53763. Dec. 4—Declaring C.P.R. crossing known as Pump-House Crossing, Belleville, Ont., protected to Board's satisfaction.

53764. Dec. 5—Amending Pere Marquette Ry. Rules for Government of Operating Dep't by striking out words "two weeks" in 2nd line of 2nd paragraph of clause 3 on page 13 and substituting therefor the word "month."

53765. Dec. 5—Authorizing C.P R. and C.N. Rys. to operate without stopping over crossing of their railways in NW¼ Sec. 31-47-14 W2M., Sask.

53766. Dec. 5—Declaring C.N. Rys. crossing of Arthur street, Harriston, Ont., protected to Board's satisfaction.

53767. Dec. 4—Authorizing C.N. Rys. and C.P.R. to close interlocking plant at Drumbo, Ont., from 12 noon to 1 p.m., 4.40 p.m. to 6 p.m., 2 a.m. to 7.50 a.m. daily.

53768. Dec. 1—Authorizing B.C. Dep't Public Works to convert existing private crossing of C.P.R. opposite Wharf road at Harrop, B.C., into a public crossing.

53769. Dec. 9—Directing C.N. Rys. to install automatic bell and wigwag at crossing at Brooklyn Station, near Liverpool, N.S.

53770. Dec. 10—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published from Bridgetown, Middleton, and Yarmouth, N.S., to Chelmsford and Chapleau, and stations on Webbwood and Thessalon Subd'ns, Ont., in Tariff C.R.C. No. E-4324 filed by C.P.R. under sec. 9.

53771. Dec. 11—Recommending to Governor in Council for sanction lease of Ottawa and New York Ry. to New York Central Ry. for 99 years.

53772. Dec. 11—Recommending to Governor in Council for sanction lease of St. Lawrence and Adirondack Ry. to New York Central Ry. for 99 years.

53773. Dec. 10—Approving plan showing proposed improvement in view at Brookfield crossing, near Brookfield, N.S.—C.N. Rys.

53774. Dec. 10—Authorizing C.P R. to construct crossing on road allowance between Cons. 8 and 9, Tp. Carling, Dist. Parry Sound, Ont.

53775. Dec. 10—Authorizing New York Central (M.C.R.) Ry. to substitute automatic bells
53776. and wigwags in lieu of lightning flash signals at crossing of Middle Town
53777. Line Road, 2·2 miles east of Brownsville; Centre Line Road, 2·80 miles
53778. east of Fargo; Drury Side Road, 0·93 mile east of Charing Cross; and Frome Road, 2·5 miles east of Shedden, Ont.

53779. Dec. 11—Approving removal of spurs constructed into premises of William Laking at Haliburton, Ont.—C.N. Rys.

53780. Dec. 11—Authorizing New York Central Ry. (M.C.R.) to substitute automatic bells
53781. and wigwags in lieu of lightning flash signals at crossings of 8th Concession

53782. Road, 0·64 mile west of Buxton; Huffman Road, 1·95 mile east of Fargo;
53783. Town Line Road, 1·22 mile east of Springfield; and Concession Road, 0·65 mile west of Aylmer, Ont.
53784. Dec. 15—Declaring C.N. Rys. crossing at Prospector, Man., protected to Board's satisfaction.
53785. Dec. 15—Declaring C.N. Rys. crossing, second west of Mulgrave Station, N.S., protected to Board's satisfaction.
53786. Dec. 15—Declaring C.P.R. crossing immediately west of Millgrove Shelter, Ont., protected to Board's satisfaction.
53787. Dec. 15—Declaring C.P.R. crossing, first north of Bolton, Ont., protected to Board's satisfaction.
53788. Dec. 15—Declaring C.P.R. crossing of Stevenson street, Guelph, Ont., satisfactorily protected so long as speed limitation of 10 miles an hour is in effect.
53789. Dec. 11—Amending Order 49080, Sept. 28, 1932, to provide that cost of maintenance of C.N. Rys. on River Lot 32, Tp. 46, Rge. 25, W2M., Sask., be paid by C.N. Rys.
53790. Dec. 11—Authorizing Manitoba Dep't Public Works to construct crossing over C.N. Rys. at 4th Street East, Mafeking Townsite, Man.
53791. Dec. 11—Approving plan showing layout now existing of C.N. Rys. crossover track at Lynden Junction, Ont.
53792. Dec. 15—Declaring C.P.R. crossing, second east of Sutherland Station, Sask., protected to Board's satisfaction.
53793. Dec. 16—Rescinding Order 45547, Oct. 6, 1930, authorizing C.N. Rys. to construct spur line to serve Carter-Halls-Aldinger Co., at St. Boniface, Man.
53794. Dec. 16—Extending until Jan. 1, 1937, time within which C.N. Rys. may install bell and wigwag at Gouin Boulevard Crossing, mileage 5·6 Montfort Subd'n, Que.
53795. Dec. 16—Extending until Feb. 1, 1937, time within which C.N. Rys. may install double bells and wigwags at crossing of St. Joseph street, west of Drummondville, Que.
53796. Dec. 16—Extending until May 31, 1937, time within which C.N. Rys. may install bell and wigwag at crossing east of Stevensville, Ont.
53797. Dec. 11—Directing C.P.R. to construct cattle pass 5 ft. wide and 7 ft. high on farm of John Brisco, Renfrew, Ont.
53798. Dec. 15—Declaring C.N. Rys. crossing just east of Pierce, Que., protected to Board's satisfaction.
53799. Dec. 15—Declaring C.P.R. crossing of Wellington street, near Sault Ste. Marie, Ont., satisfactorily protected so long as speed limitation of 10 miles an hour is in effect.
53800. Dec. 16—Declaring C.N. Rys. crossing of Main street, Dauphin, Man., protected to Board's satisfaction so long as speed limitation of 10 miles an hour is in effect.
53801. Dec. 16—Authorizing City of Owen Sound, Ont., to extend 17th street east across track of C.P.R.
53802. Dec. 16—Declaring C.P.R. crossing third west of Magog, Que., protected to Board's satisfaction.
53803. Dec. 17—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls pub-
53804. lished in tariffs and supplements filed by C.P.R. under sec. 9.
53805. Dec. 16—Relieving New York Central Ry. from posting certain tariffs at stations where population is not over 2,000, and at stations where population is over 2,000 and not over 10,000 tariffs that are never used need not be posted.
53806. Dec. 21—Authorizing Transcontinental Freight Bureau to issue supplement to its Tariff C.R.C. No. 675 revising rates on silk from Pacific Coast ports.
53807. Dec. 21—Authorizing C.N. Rys. to issue a supplement to their Tariff No. C.M. 273-1, C.R.C. No. E-2493, correcting errors in minimum rates per 100 pounds on commodities in mixed carloads from Montreal and Quebec, Que.
53808. Dec. 22—Declaring C.N. Rys. crossing of Main street, Listowel, Ont., protected to Board's satisfaction.
53809. Dec. 22—Declaring C.P.R. crossing of Josephine street, Wingham, Ont., protected to Board's satisfaction.
53810. Dec. 18—Rescinding Order 53192, June 6, 1936, authorizing C.N. Rys. to construct highway crossing near Destor, Tp. Clericy, Co. Abitibi, Que.
53811. Dec. 22—Authorizing C.N. Rys to operate over connection with C.P.R. Bienfait Mine spur in north half of Sec. 19-2-6, W2M., at Bienfait, Sask.
53812. Dec. 23—Authorizing Kent Coal Co., Ltd., to mine coal under the C.N. Rys. in the NW¼ of Sec. 19-52-23, W4M., Alta.
53813. Dec. 23—Authorizing C.P.R. to construct spur to serve Natural Sodium Products, Limited, in SW¼ Sec. 21-12-28, W2M., Sask.
53814. Dec. 22—Authorizing B.C. Dep't Public Works to construct crossing of C.N. Rys. at mileage 49·9 north of Victoria, Cowichan Subd'n, in lieu of existing crossing at mileage 50·3.

53815. Dec. 22—Approving service station contract between Bell Telephone Co. and La Conception Telephone Co., Ltd.
53816. Dec. 22—Approving Supp. 1 to service station contract between Bell Telephone Co. and Standard Chemical Co., Ltd.
53817. Dec. 22—Amending Order 53754, Dec. 2, 1936, by striking out figures "38·52" in 8th line of paragraph 1, and substituting therefor figures "39·47."
53818. Dec. 22—Declaring C.N. Rys. crossing, second south of Cookstown Station, Ont., protected to Board's satisfaction.
53819. Dec. 23—Authorizing C.N. Rys. to dismantle interlocking plant and to operate their trains over the drawbridge over the Trent Canal at Nassau, Ont.
53820. Dec. 23—Authorizing C.N. Rys. to operate over highway bridge over east and west road allowance between Sec. 35-52-22 and Sec. 2-53-22, W4M., Alta.
53821. Dec. 24—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in tariffs and supplements filed by C.P.R. under sec. 9.
53822.
53823.
53824. Dec. 24—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, toll published in Item 226-C from Burton's, N.S., to Halifax, in Supp. 34 to Tariff C.R.C. No. 906 filed by Dominion Atlantic Ry. under sec. 9.
53825. Dec. 28—Declaring C.N. Rys. crossing of Raglan street, Renfrew, Ont., protected to Board's satisfaction.
53826. Dec. 29—Declaring C.N. Rys. crossing, first west of Ste. Madeleine Station, Que., protected to Board's satisfaction.
53827. Dec. 29—Declaring Quebec Central Ry. crossing just west of Beauceville Station, Que., protected to Board's satisfaction.
53828. Dec. 28—Extending until June 1, 1937, time limited by Order No. 51690 for re-establishing train service of V.V. & E. Ry. & Nav. Co. between International Boundary and Princeton, B.C.
53829. Dec. 22—Authorizing C.P.R. to construct two industrial spurs on Hamilton street, Vancouver, B.C.
53830. Dec. 28—Declaring C.N. Rys. crossing just west of St. Eugene Station, Que., protected to Board's satisfaction.
53831. Dec. 29—Declaring Nipissing Central Ry. crossing, first north of Rouyn Station, Que., protected to Board's satisfaction.
53832. Dec. 29—Declaring C.N. Rys. crossing of Townsend street, Sydney, N.S., satisfactorily protected so long as speed restriction of 15 miles an hour is in effect.

414

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The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXVI | Ottawa, February 1, 1937 | No. 23

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ORDER No. 53865

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

TUESDAY, the 5th day of January, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders: That the toll published in Item No. 345-A of Supplement No 9 to Tariff C.R.C. No. 1006, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subjection 3 of section 3 of the said Act.

And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Item No. 345-A of Supplement No. 9 to Tariff C.R.C. No. 1006, approved herein, is 18½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53863

In the matter of the application of the Detroit and Windsor Subway Company and the Detroit and Canada Tunnel Company, hereinafter called the "Applicant Companies" for approval of Supplement No. 8 to Tariff C.R.C. No. 18, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5.

WEDNESDAY, the 6th day of January, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the applicant companies' said Supplement No. 8 to Tariff C.R.C. No. 18, covering tolls to be charged in respect of the Detroit tunnel, on file with the Board under file No. 35943.5, be, and it is hereby, approved.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53868

In the matter of the application of the Detroit and Canada Tunnel Corporation, under Section 323 of the Railway Act, for an Order authorizing George R. Cooke, President, to prepare and issue tariffs of the tolls and fares to be charged for the use of Applicant's Vehicular tunnel, as set out in the resolution passed at a meeting of the Board of Directors on December 26, 1936, a certified copy of which is on file with the Board under file No. 35943.4.

FRIDAY, the 8th day of January, A.D. 1937.

Hon. HUGH GUTHRIE. K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said George R. Cooke, President of the Detroit and Canada Tunnel Corporation, be, and he is hereby, authorized from time to time to prepare and issue tariffs of the tolls and fares to be charged for the use of the said corporation's vehicular tunnel, and to specify the persons to whom, the place where, and the manner in which, such tolls shall be paid.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53872

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.8

FRIDAY, the 8th day of January, A.D. 1937.

Hon. HUGH GUTHRIE. K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders: That the toll published in Tariff C.R.C. No. 54, filed by the Sydney and Louisburg Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

And the Board hereby certifies that the normal toll, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 54, approved herein, is 6 cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner..

ORDER No. 53871

In the matter of the application of the Transcontinental Freight Bureau, hereinafter called the "Applicant," for permission to make correction, on less than statutory notice, in the rate on citrus fruits from points in Arizona, California, Nevada, and Utah to Winnipeg, Manitoba.

File No. 27612.148

MONDAY, the 11th day of January, A.D. 1937.

J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon its appearing that through clerical error the said rate was reduced 12 cents per 100 pounds instead of 8 cents per 100 pounds; and upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant be, and it is hereby, granted leave to issue, on five days' notice, an amendment to its Tariff C.R.C. No. 681, Item No. 1220-B,

Supplement No. 11, correcting the said error in publication of the rate on citrus fruits from points taking rate basis 1 rates in Arizona, California, Nevada, and Utah to points in Group 12, Winnipeg, Manitoba, so as to read $1.56 per 100 pounds; the title page of the supplement to bear a note to the effect that it is issued under the authority of this order to correct an error.

J. A. STONEMAN,
Commissioner.

ORDER No. 53877

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

TUESDAY, the 12th day of January, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

It is ordered: That the tolls published in the following tariffs, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement No. 28 to Tariff C.R.C. No. E-2248.
Supplement No. 8 to Tariff C.R.C. No. E-2444.
Supplement No. 32 to Tariff C.R.C. No. E-1258.
Supplement No. 31 to Tariff C.R.C. No. E-1258.
Supplement No. 3 to Tariff C.R.C. No. E-2448.
Supplement No. 36 to Tariff C.R.C. No. E-1911.
Tariff C.R.C. No. E-2381.
Tariff C.R.C. No. E-2407.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53887

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 15th day of January, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Item 4C of Supplement No. 7 to Tariff C.R.C. No. 879, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Item 4C of Supplement No. 7 to Tariff C.R.C. No. 879, approved herein, is 5½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53893

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

FRIDAY, the 15th day of January, A.D. 1937.

Hon. HUGH GUTHRIE. K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Item 170D of Supplement No. 8 to Tariff C.R.C. No. E-4645, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Item 170D of Supplement No. 8 to Tariff C.R.C. No. E-4645, approved herein, are as follows:—

To	Cents per 100 pounds
Edmundston, N.B.	24
Ottawa, Ont.	27½

One and one-half cents per 100 pounds to be deducted on account of water movement.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53898

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

MONDAY, the 18th day of January, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 13 to Tariff C.R.C. No. E-1745, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Temiscouata Railway Company's proportion to be reported as shown below.

2. And the Board hereby certifies that the Temiscouata Railway Company's proportion of the normal tolls, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 13 to Tariff C.R.C. No. E-1745, approved herein, is as follows:—

	Cents per 100 pounds			
	Via Edmundston		Via Riviere du Loup	
To	Tariff	Normal	Tariff	Normal
Edmundston, N.B.	..	...	6	7.5
St. Hilaire, N.B.	4	5.0	6	7.5
Baker Brook, N.B.	4	5.0	6	7.5
Caron Brook, N.B.	4	5.0	6	7.5
Clairs, N.B.	4	5.0	6	7.5
Ledges, N.B.	6	7.5	8	10.0
Little River Mills, N.B.	7	8.8	9	11.3
Connors, N.B.	7	8.8	9	11.3

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53900

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

MONDAY, the 18th day of January, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 19 to Tariff C.R.C. No. E-1745, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3; the Temiscouata Railway Company's proportion to be reported as shown below.

2. And the Board hereby certifies that the Temiscouata Railway Company's proportion of the normal tolls, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 19 to Tariff C.R.C. No. E-1745, approved herein, is as follows:—

	Cents per 100 pounds			
	Via Edmundston		Via Riviere du Loup	
To	Tariff	Normal	Tariff	Normal
St. Modeste, Que.	...	...	4	5.0
Whitworth, Que.	...	...	6	7.5
Couturier, Que.	...	...	6	7.5
St. Honore, Que.	...	...	8	10.0
Vauban, Que.	...	...	8	10.0
St. Louis du Ha Ha, Que.	...	...	9	11.3
Cabano, Que.	...	...	10	12.5
Notre Dame du Lac, Que.	...	...	10	12.5
Ste. Rose, Que.	6.5	8.1	11	13.8
St. Jacques Church, N.B.	4.5	5.6	9	11.3

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53903

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 21st day of January, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 36 of Supplement No. 46 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company to report its proportion of the tariff toll as shown below.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal toll, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item 36 of Supplement No. 46 to Tariff C.R.C. No. 851, approved herein, is as follows:—

	Cents per 100 pounds
Tariff	10.9
Normal	13.6

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53904

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 21st day of January, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 1024, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 1024, approved herein, are as follows:—

To	Cents per 100 pounds
Montreal, Que.	24
Sherbrooke, Que.	23

One and one-half cents per (100) hundred pounds to be deducted on account of water movement.

H. GUTHRIE,
Chief Commissioner.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

XXVI | Ottawa, February 15, 1937 | No. 24

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Complaint of Mr. Achille Lizotte, St. Roch des Aulnaies, County L'Islet, P.Q., re *flooding of his land by water from Canadian National Railways' off-take ditch between Lots 310 and 311.*

File No. 39598

JUDGMENT

GARCEAU, DEPUTY CHIEF COMMISSIONER:

The complainant, Mr. Lizotte, asks that the railway company clean out and maintain the off-take ditch on the boundary line between his property and Mr. Caron's property to the west, between lots three hundred and ten (310) and three hundred and eleven (311), from the railway culvert southerly to Ferree river, a distance of about seven hundred (700) feet.

The reason for this request is that it is claimed that the railway is bringing water for a distance of about 11 arpents to the west that drains southerly to the railway from the north into the railway ditch along the north side of the track and to the culvert at mileage 50·3 at the off-take ditch.

Our Engineer's report says:—

> "Undoubtedly, the construction of the railway has brought to this ditch more water than it would naturally take care of . . ."

According to this report, the applicant suffers a wrong that ought to be redressed but the Board is not the authority having jurisdiction in this instance. Its jurisdiction concerning drainage is confined within sections 268, 269, 270 and 271 of the Railway Act and applies only to drainage alongside, across and under the railway.

This off-take ditch is on private property and under the jurisdiction of the authority created by the Municipal Code of Quebec: The Municipal Corporation.

I would dismiss the application for lack of jurisdiction.

OTTAWA, January 21, 1937.

The Chief Commissioner and Assistant Chief Commissioner concurred.

32055-1

Plainte de M. Achille Lizotte, St-Roch des Aulnaies, Comté de L'Islet, Qué. re inondation de sa terre par l'eau provenant du fossé de décharge situé entre les lots 310 et 311. Dossier n° 39598.

JUGEMENT

GARCEAU, COMMISSAIRE EN CHEF SUPLÉANT:

Le plaignant, M. Lizotte, demande que la compagnie de chemin de fer nettoie et entretienne le fossé de décharge qui se trouve sur la ligne de division entre sa propriété et celle de M. Caron à l'ouest, entre les lots trois cent dix (310) et trois cent onze (311), à partir du ponceau du chemin de fer allant vers le sud jusqu'à la rivière Ferrée, soit une distance d'environ sept cents (700) pieds.

La présente demande est basée sur le fait que l'on prétend que le chemin de fer amène l'eau sur une distance d'environ 11 arpents vers l'ouest, laquelle s'égoutte vers le sud jusqu'àu chemin de fer, venant du nord pour se jeter dans le fossé du chemin de fer du côté nord de la voie, et jusqu'au ponceau situé au mille 50·3 où se trouve le fossé de décharge.

Le rapport de notre ingénieur déclare ce qui suit:—

> "Sans doute, la construction du chemin de fer a amené à ce fossé plus d'eau qu'il en recevrait naturellement...."

Selon ce rapport, le requérant subit un tort qui devrait être réparé, mais la Commission n'est pas l'autorité ayant juridiction dans le cas présent. Sa juridiction relativement au drainage est limitée par les articles 268, 269, 270 et 271 de la Loi des chemins de fer et s'applique seulement au drainage de chaque côté, en travers et en-dessous du chemin de fer.

Le fossé de décharge dont il s'agit est situé sur la propriété privée et est sous la juridiction de l'autorité créée par le Code Municipal de Québec, à savoir La Corporation Municipale.

Je renverrais la requête faute de juridiction.

OTTAWA, le 21 janvier 1937.

Le commissaire en chef et le commissaire en chef adjoint se sont ralliés au jugement ci-dessus.

ORDER No. 53916

In the matter of the complaint of Achille Lizotte, of St. Roch des Aulnaies, in the County of L'Islet, Province of Quebec, against the flooding of his land by water from the Canadian National Railways' off-take ditch between Lots 310 and 311.

File No. 39598

MONDAY, the 25th day of January, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*

Upon hearing the matter at the sittings of the Board held in Quebec, January 11, 1937, in the presence of counsel for the railway company, the complainant appearing in person, and what was alleged,—

It is ordered: That the complaint be, and it is hereby, dismissed.

H. GUTHRIE,
Chief Commissioner.

Application of Quebec-Montmorency Chamber of Commerce, on behalf of Bell Telephone subscribers at Loretteville, Que., for an Order directing the Bell Telephone Company to extend the Quebec local exchange area to include all subscribers within ten miles from the City of Quebec.

File No. 3574·351.

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER:

This application was heard at Quebec on the 11th and 12th days of January, 1937, in the presence of representatives of the applicants and of the Bell Telephone Company.

A brief explanation of the situation with respect to telephone service and tolls within the area comprised in this application seems essential to provide a background for a proper understanding of what is involved.

Prior to 1924, telephone subscribers at Loretteville, as well as other municipalities contiguous to Quebec City as later named herein, were served by rural party line service connected with the Quebec City exchange. By the year 1924, Loretteville had become a well defined community with approximately 100 subscribers and, in December of the same year, an exchange was established at Loretteville, resulting, the company states, in a more satisfactory service to Loretteville subscribers, as it provided for individual and two-party line service, enabling a more prompt and direct service between Loretteville subscribers, and also between Loretteville and Quebec, than could be had by rural party line service with up to as many as 10 subscribers on one line, which frequently causes delays in calling the desired party. It not only gave Loretteville subscribers a superior type of service in the form of individual and two-party lines, but also reduced the tolls for calls between subscribers within the Loretteville exchange. While, prior to March 1, 1927, when telephone tolls were reviewed and revised by the Board's Order No. 38777, dated February 21, 1927, the differences were somewhat at variance with those prevailing since that date, the toll situation is illustrated by reference to the rates which have been in force since March 1, 1927. If Loretteville subscribers were still connected with the Quebec City exchange by a rural party line service, which is a very inferior character of service to that now received, the monthly charge would be $2.85 for a business service and $2.60 for a residence service. They obtain a business service within the Loretteville base rate area for a monthly charge of $2.50 for an individual line and $2.00 for a two-party line and the charge for a residence service is $2.05 for an individual line and $1.85 for a two-party line. Since December 1924, with the establishment of the Loretteville exchange, and a change in the character of service provided, calls between Loretteville and Quebec exchanges have, of course, been subject to the approved long distance toll of 10 cents each for station to station five minute talks. Throughout Ontario and Quebec in the territory served by the Bell Company, calls between subscribers of one exchange area and subscribers in another exchange area are subject to long distance tolls which, of course, vary according to the distance involved. In other words, the telephone rate structure, insofar as concerns what is here in issue, is based on the establishment of local service charges for unlimited calls within the base rate area of the specifically named exchange and these rates for local exchange service vary according to the grouping as prescribed by the Board in 1927, as set out in Volume 16, Board's Judgments and Orders, at pages 254 to 256, and, of course, calls between separate exchange areas are subject to the long distance tolls.

For wall equipment, a comparison of the local service rates at Quebec and Loretteville exchanges is as follows:—

Class of Service	Monthly Basis Quebec	Monthly Basis Loretteville	Annual Basis Quebec	Annual Basis Loretteville	Difference
Individual—					
Business..	$4 75	$2 50	$57 00	$30 00	$27 00
Residence..	3 00	2 05	36 00	24 60	11 40
Two-party—					
Business..	4 00	2 00	48 00	24 00	24 00
Residence..	2 50	1 85	30 00	22 20	7 80
Rural—					
Business..	2 85	1 90	34 20	22 80	11 40
Residence..	2 60	1 65	31 20	19 80	11 40
Extensions—					
Business..	1 05	80	12 60	9 60	3 00
Residence..	80	55	9 60	6 60	3 00

Other municipalities adjacent to Quebec city, such as Charlesbourg, Ancienne Lorette, Giffard, St. Gregoire de Montmorency, Beauport, Courville, L'Ange Gardien, etc., still receive service from Quebec by rural party lines at the Quebec rural service rates shown above.

The application of the Chamber of Commerce of the counties of Quebec and Montmorency, as contained in resolution adopted at meeting held at Loretteville October 26, 1936, asks that the Bell Telephone Company connect the telephone at Loretteville with the central exchange at Quebec, so that subscribers at Loretteville, a distance of 9 miles from Quebec, would be treated in the same manner as those situated 13 miles away, for example, at L'Ange Gardien. Mr. Wilfrid Lacroix, M.P., in his letter of November 30, 1936, states:—

> "What we want can be resumed as follows: to compel the Bell Telephone Company to extend, from 2 to 10 miles, the sector outside the city of Quebec where that company will be obliged to furnish the telephone service on the same conditions and rates as applies to Quebec."

What is applied for, therefore, is that the long distance charges for calls between the Loretteville and Quebec exchanges be eliminated and that the Quebec base rate area be extended to include all territory within 10 miles of the city of Quebec.

Reference is made by applicants to extending the Quebec exchange rates from 2 to 10 miles, from which it may be inferred that it is their understanding that the present Quebec base rate area embraces the territory within a radius of 2 miles from the Quebec central office. There is, in fact, no fixed mileage radius within the Quebec, or the many other exchanges in the provinces of Quebec and Ontario. The Quebec base rate area is as outlined in Exhibit No. 7. The telephone company states that, in establishing base rate areas, they follow the principle of including the area within which there is practically a continuous development in the form of residences or business places, and that it is not the general practice to also extend out to and include, in these base rate areas, some outlying developed community where there is a considerable intervening distance of no development. They assert that to do so would involve large expenditures of money for additional construction of plant, equipment and lines, also increased operating cost, with the ultimate result that the local exchange rates would have to be increased to meet such cost. This latter feature was not developed, except in a very general way, and does not enable any concluded opinion to be formed. It does seem obvious, however, that if such a radical departure from the present and long-standing practice were to be directed at Quebec and the base rate area so greatly extended, it would set a precedent under which similar treatment could not be denied to a very large number of other points within the Bell Company's territory, and it is equally clear that it might require an entire revision of the rate structure which was fully considered and prescribed by the Board in 1927. Certainly, the matter was not sufficiently developed on this record to warrant the Board in now considering any such revision.

It is also stated by the applicants that the Loretteville subscribers are in an inferior position to the residents at Charlesbourg, Ancienne Lorette, Giffard, St. Gregoire de Montmorency, Beauport, Courville, etc., who are in direct communication with the Quebec exchange.

As already pointed out herein, the majority of the subscribers at the points last named are served by rural party lines, a very inferior type of service as compared with the individual and two-party lines in the Loretteville exchange. Further, their monthly charge for this rural line service is higher than for the use of individual and two-party lines within the Loretteville exchange. Applicants very clearly and positively stated that the Loretteville subscribers do not desire to revert to rural line service, but desire to continue their individual and two-party line service, so that the situations are not comparable and do not, in my opinion, substantiate the applicants' allegation. We have nothing whatever before us to indicate whether those subscribers receiving rural line service, or any considerable number of them, would desire to obtain individual or two-party line service at a monthly charge, upon the basis of Quebec rates, of $4.75 for an individual line and $4 for a two-party line for business service, as compared with their present monthly charge of $2.85.

The applicants' proposal would increase the charges of Loretteville subscribers to the extent shown in tabulation on page 424 hereof. It will be observed that the change sought would only benefit Loretteville individual business subscribers having more than 270 calls per year to the Quebec exchange and residence individual subscribers having more than 114 calls, based upon a 10 cent call. In the case of two-party line service, such calls would require to exceed 240 for a business service and 78 for a residence service before there would be any benefit.

The telephone company filed Exhibit No. 11, reading:—

COMPARISON OF EFFECT ON EXISTING LORETTEVILLE SUBSCRIBERS AS RESULT OF APPLYING QUEBEC EXCHANGE RATES

Class of Service	Subscribers who would benefit		Subscribers who would not benefit	
	Number	Per cent	Number	Per cent
Individual—				
Business	8	17	38	83
Residence	10	28	26	72
Two-party—				
Business	2	15	11	85
Residence	2	33	4	67
Rural—				
Business	4	67	2	33
Residence	1	14	6	86
Total	27	24	87	76

It is stated that an investigation was made of the amounts Loretteville subscribers actually paid for a year, both for local service and in toll service to Quebec, as compared with the amounts they would pay at the Quebec exchange rates, and the result is as above shown, namely, that, based on the toll service they actually paid to Quebec during the past year, only 24 per cent of the subscribers would benefit and 76 per cent would pay more than they are paying today for both their local and toll service to Quebec.

On this point, various witnesses stated they did not call to Quebec as often as they wished to because of the toll charge and expressed the opinion that the majority of the Loretteville subscribers would be willing to pay the higher Quebec exchange rate so as to enable unlimited calls between these two exchanges. It is stated that the toll charge detrimentally affects the business of certain Loretteville firms, because potential Quebec customers will not pay the toll charge.

Evidence was also given that, in the case of some companies doing business in Loretteville, their toll charges to Quebec amount to a very substantial yearly sum and they would receive the largest benefit under the applicants' proposal. It may be stated, in passing, that this situation, as at present existing, is no different from that prevailing at a great many other points throughout the Provinces of Quebec and Ontario. It has been always recognized that long distance toll service is a reasonable arrangement for calls between two separate exchange areas. This is the foundation upon which the system of long distance toll service has been built, and approved by this Board.

The applicants' desire to have long distance tolls between exchanges eliminated, and to greatly extend the Quebec base rate area in order to effect reductions in the telephone charges of many of the subscribers, may be readily understood; further, the applicants are not in any way concerned with the effect that this might have elsewhere. The Board, however, is in an entirely different position. In any case where tolls, or rates, are prescribed or directed by the Board, it must consider carefully the underlying principles that apply in so far as the telephone rate structure is concerned and avoid a direction which would create maladjustments, unjust discrimination, or undue preference. It is incumbent upon the Board to consider whether a direction given by it will create discrimination of the very character that the Railway Act commands it to prohibit. A situation of the character now before us cannot be considered apart and isolated from the whole rate structure. The Board concluded a very exhaustive investigation of the rates for local exchange service in 1927 and the local exchange rates within the Quebec and Loretteville exchanges are as then prescribed. The principle of a long distance toll between separate exchanges has existed for a very great number of years. This whole rate fabric would be affected by what is involved in this application, because there are such a great number of other places where similar situations prevail and it is to be expected that they would demand and could not be denied similar treatment. It is impossible to foresee, with the very meagre data before us, the effect that this would have upon the telephone company in the form of increased expenditures and operating costs, or upon its revenue. Where is the line to be drawn; at ten miles, as applied for, or some other distance? These and many other considerations are particularly relevant.

In other words, where, as in this case, no evidence was given showing the charges to be, in themselves, unreasonable or discriminatory; where no evidence was given to show that the underlying principles upon which these rates have been fixed is unsound in any way; where the entire situation with regard to local exchange rates was the subject of a most exhaustive investigation by the Board in 1927 and nothing has since developed indicating any necessity for revision thereof; should the Board now consider interfering with the toll structure heretofore adopted merely upon a local application of this character where the evidence does nothing more than indicate the desire of certain subscribers to have a reduction in their telephone charges? I think not.

Nowhere in the record is mention made of Levis, which is another separate exchange area, yet that exchange would also be included within the Quebec exchange area under the 10 mile radius from Quebec city, as covered by this application. The same toll charge applies between the Levis and Quebec exchanges as in the case of calls between the Loretteville and Quebec exchanges. We have no complaint before us concerning this situation, and, undoubtedly, the toll charges between Levis and Quebec are very much greater in amount than between Loretteville and Quebec, Levis having approximately 1,217 subscribers and Loretteville 148. The applicants' proposal would increase Levis subscribers rates as follows:—

	Monthly Charge
Business Service—	
Individual line	From $2 75 to $4 75
Two-party line	From 2 25 to 4 00
Residence Service—	
Individual line	From $2 05 to $3 00
Two-party line	From 1 85 to 2 50
Extension Station—	
Business service	From $ 80 to $1 05
Residence service	From 55 to 80
Rural Line Service—	
Business service	From $1 90 to $2 85
Residence service	From 1 65 to 2 60

There is no evidence before us indicating that such a proposal would be satisfactory to the majority of Levis subscribers.

There are also separate exchange areas at Charny, Etchemin and Ste. Petronille, which are within the area covered by this application, which would also be affected.

Attention may also be directed to another result that would follow logically from this application, which the applicants have apparently not considered, but which the Board would be required to take cognizance of. Under the schedule, or grouping, of exchange areas prescribed by the Board in 1927, Quebec is in Group 4. Group 4 is for exchange areas with a maximum of 20,000 stations, and Group 3 for exchange areas embracing from 20,001 to 50,000 stations. The extension of the Quebec exchange area, here sought, would enlarge that area to embrace over 25,000 stations, with the result that the telephone company would, undoubtedly, apply to have Quebec placed in Group 3, and I do not know upon what grounds the application could be reasonably denied. Under similar conditions, namely, the increase in the number of stations to beyond the maximum fixed for the group, the Board recently issued Orders authorizing the removal of Granby, Bowmanville, Wallaceburg and Drummondville from Group 8 to Group 7. The Group 3 and Group 4 rates are as follows:—

	Rates Per Month			
	Business		Residence	
Class of Service	Group 3	Group 4	Group 3	Group 4
One-party line	$5 50	$4 75	$3 10	$3 00
Two-party line	4 50	4 00	2 60	2 50
Rural party line	3 25	2 85	3 00	2 60
Extension station	1 05	1 05	80	80

The ultimate result might well be, therefore, that several thousand telephone subscribers within the City of Quebec and surrounding area would be subjected to substantially increased tolls in order to lessen the telephone charges paid by a small number of Loretteville subscribers who are frequent users of Quebec communication, and are now paying for that service on a user basis, as is now also being done by telephone subscribers elsewhere throughout the territory of the Bell Company.

This application is that the Board should issue an Order directing the Telephone Company to make a very large extension and readjustment of its Quebec exchange area, with the effect of elimination as local exchange areas of the Levis, Loretteville, Charny, Etchemin and Ste. Petronille exchanges, already established by the Company. Going back over a period of many years, there have been numerous decisions of the Board, and all reaching the same conclusion, namely, that the establishment, redivision and readjustment of exchange areas of a telephone company are matters of internal management of the company's business, with which the Board has no jurisdiction to interfere; the Board's power being limited to seeing that the rates and tolls applicable to areas so established are not unreasonable or unjustly discrim-

inatory. The decisions of the Board with respect to this matter are to be found in the following cases:—

Tinkess vs. Bell Telephone Co., 20 C.R.C., 249;
Town of Dundas, et al, vs. Bell Telephone Co., 31 C.R.C., 352;
Application of the Union of British Columbia Municipalities, 27 C.R.C., 319;
Complaint of the Towns of Riverside, Tecumseh, et al, against the division of exchange territory made by the Bell Telephone Co., in the district surrounding Windsor, 31 C.R.C., 381;
Application of the Corporation of Point Grey, B.C., 34 C.R.C., 175;
Application of the Residents of the Municipality of Point Grey, B.C., 31 C.R.C., 387;
Application of the Corporation of the Township of York, 34 C.R.C., 170.

With respect to the present application, the local exchange rates are those prescribed by the Board, and the long distance tolls were also approved by the Board. No evidence was given showing them to be unreasonable per se or discriminatory.

For the reasons set out herein, the application must be dismissed.

OTTAWA, February 1, 1937.

The Assistant Chief Commissioner concurred.

The Deputy Chief Commissioner agreed in the conclusions of the judgment but submitted that, although the establishment, redivision and readjustment of exchange areas are matters of the management of the company's business, the Board has jurisdiction to interfere when there is concrete evidence that on account of or through such redivision or redistribution, unreasonable or discriminatory rates are charged.

Requête de la Chambre de Commerce des comtés de Québec et de Montmorency, au nom des abonnés de la compagnie de téléphone Bell, de Loretteville, P.Q., demandant qu'une Ordonnance soit rendue enjoignant à ladite compagnie d'étendre le territoire d'échange local de Québec pour y inclure tous les abonnés qui se trouvent dans un rayon de dix milles de la cité de Québec.

Dossier N° 3574·351.

JUGEMENT

GUTHRIE, Commissaire en chef:—

Cette requête fut entendue à Québec les 11 et 12 janvier 1937 en présence des représentants des requérants et de la compagnie de téléphone Bell.

Une brève explication de la situation au sujet du service téléphonique et des tarifs imposés dans le territoire impliqué dans la présente requête, semble essentielle pour établir une base en vue d'une juste compréhension de ce dont il s'agit.

Avant 1924, les abonnés de Loretteville et des autres municipalités voisines de la cité de Québec et énumérées ci-après, étaient pourvus d'un service rural desservant plusieurs personnes et relié à l'échange de la cité de Québec. Au cours de l'année 1924, Loretteville était devenue une municipalité comprenant à peu près 100 abonnés, et en décembre de la même année, un bureau d'échange

était établi à Loretteville avec le résultat, d'après ce que déclare la compagnie, qu'un service plus satisfaisant était fourni aux abonnés de Loretteville, vu qu'il pourvoyait à un service individuel et à deux abonnés procurant par là aux abonnés de Loretteville de même qu'entre Loretteville et Québec, un service plus rapide et plus direct qu'il pouvait être obtenu avec un service rural desservant des abonnés jusqu'au nombre de dix sur une seule ligne, ce qui cause très souvent des délais quand on appelle une personne désignée. Cet échange ne donnait pas seulement aux abonnés de Loretteville un service d'un caractère supérieur sous la forme de lignes individuelles et à deux abonnés, mais réduisait aussi les tarifs pour les appels entre les abonnés de l'échange de Loretteville. Tandis qu'avant le 1er mars 1927, alors que les tarifs téléphoniques furent examinés de nouveau et revisés par l'ordonnance de la Commission N° 38777 datée du 21 février 1927, les différences étaient quelque peu en désaccord avec celles qui sont en vigueur depuis cette date, la situation des tarifs s'éclaircit lorsque l'on se réfère aux tarifs qui sont en vigueur depuis le 1er mars 1927. Si les abonnés de Loretteville se trouvaient encore raccordés avec l'échange de la cité de Québec par une ligne rurale desservant plusieurs abonnés, ce qui est un genre de service bien inférieur à celui que l'on reçoit présentement, les frais mensuels seraient de $2.85 pour le service de téléphone d'affaires et de $2.60 pour le service de téléphone domiciliaire. Il leur est fourni un service de téléphone d'affaires, dans le territoire de Loretteville auquel s'applique un tarif de base, au taux mensuel de $2.50 pour une ligne individuelle et de $2.00 pour une ligne à deux abonnés, et le taux pour le service domiciliaire est de $2.05 pour une ligne individuelle et de $1.85 pour une ligne à deux abonnés. Depuis décembre 1924, avec l'établissement de l'échange de Loretteville et un changement dans le genre du service fourni, des appels entre les bureaux d'échange de Loretteville et de Québec ont, il va sans dire, été sujets au tarif approuvé de longue distance de 10 cents chacun pour une conversation de 5 minutes de station à station. Partout dans l'Ontario et le Québec, dans le territoire desservi par la compagnie de téléphone Bell, les appels entre abonnés d'un territoire d'échange et ceux d'un autre territoire sont sujets aux tarifs de longue distance qui d'ailleurs varient selon les distances. En d'autres termes, la structure des tarifs de téléphone, autant que cela concerne ce qui est présentement en litige, est basée sur l'établissement de taux pour le service local sans limite quant au nombre d'appels, lesquels sont en vigueur dans le territoire à tarif de base de l'échange spécifiquement nommé, et ces taux pour le service d'échange local varient suivant les groupements tels que prescrits par la Commission en 1927, et rapportés au Volume 16 des Jugements et Ordonnances de la Commission, pages 254 à 256, et il va sans dire, les appels entre les différents territoires d'échange sont sujets aux tarifs de longue distance.

Pour les téléphones installés aux murs, une comparaison entre les tarifs d'échange locaux de Québec et ceux de Loretteville s'établit comme suit:—

	Base mensuelle		Base annuelle		
Genre de service	Québec	Loretteville	Québec	Loretteville	Différence
Individuel					
Affaires.	$4 75	$2 50	$57 00	$30 00	$27 00
A domicile. . . .	3 00	2 05	36 00	24 60	11 40
A deux abonnés					
Affaires.	4 00	2 00	48 00	24 00	24 00
A domicile. . . .	2 50	1 85	30 00	22 20	7 80
Rural					
Affaires.	2 85	1 90	34 20	22 80	11 40
A domicile. . . .	2 60	1 65	31 20	19 80	11 40
Extensions					
Affaires.	1 05	80	12 60	9 60	3 00
A domicile. . . .	80	55	9 60	6 60	3 00

D'autres municipalités voisines de la cité de Québec, telles que Charlesbourg, Ancienne-Lorette, Giffard, St-Grégoire de Montmorency, Beauport, Courville,

L'Ange-Gardien, etc., reçoivent encore le service de Québec par les lignes rurales à plusieurs abonnés aux taux de Québec pour le service rural, mentionné ci-dessus.

La requête de la Chambre de Commerce des comtés de Québec et de Montmorency, que renferme la résolution adoptée à l'assemblée tenue à Loretteville le 26 octobre 1936, demande que la compagnie de téléphone Bell raccorde le service du téléphone à Loretteville avec l'échange central de Québec, de façon à ce que les abonnés de Loretteville qui se trouvent à une distance de 9 milles de Québec soient traités de la même manière que ceux qui se trouvent à 13 milles de distance, comme ceux, par exemple, de L'Ange-Gardien. M. Wilfrid Lacroix, M.P., dans sa lettre du 30 novembre 1936 à la Commission, dit:—

> "Ce que nous voulons se résume comme suit: forcer la compagnie Bell Téléphone à étendre de 2 milles à 10 milles le secteur en dehors de la ville de Québec où la compagnie Bell Téléphone sera obligée de donner le service téléphonique aux mêmes conditions et taux de la ville de Québec."

Ce que les requérants demandent, par conséquent, c'est qu'on abolisse les tarifs de longue distance pour les appels entre les bureaux d'échange de Loretteville et de Québec, et que le territoire à tarif de base de Québec soit étendu pour y inclure tout le territoire dans un rayon de dix milles de la cité de Québec.

Les requérants font allusion à l'extension du territoire, auquel s'appliquent les tarifs d'échange de Québec, d'un rayon de 2 à 10 milles, d'où l'on peut conclure qu'ils conçoivent que le territoire à tarif de base de Québec couvre le territoire compris dans un rayon de 2 milles à partir du bureau central de Québec. De fait, il n'existe pas de rayon milliaire fixé dans le territoire d'échange de Québec non plus que dans les territoires des nombreux autres échanges dans les provinces de Québec et d'Ontario. Le territoire à tarif de base de Québec est tel qu'indiqué dans l'exhibit nº 7. La compagnie de téléphone allègue que dans l'établissement des territoires à tarif de base, elle suit le principe d'inclure le territoire dans lequel il y a pour ainsi dire un développement ininterrompu sous forme de résidences ou de places d'affaires, et que ce n'est pas la pratique générale, dans ces territoires à tarif de base, d'y faire entrer ou d'y inclure certains endroits en dehors en voie de développement, mais qui sont séparés par des distances considérables ne présentant aucun développement. Elle affirme que pour ce faire, il en coûterait beaucoup d'argent pour ajouter des constructions nouvelles à son installation, à son équipement et à ses lignes, et que ses frais d'exploitation seraient augmentés avec le résultat que les tarifs d'échange locaux devraient être haussés pour rencontrer ces dépenses. Ce dernier point n'a pas été développé, si ce n'est d'une façon générale, et ne nous permet pas de former une opinion concluante. Il semble, toutefois, évident que si un tel éloignement radical de la pratique actuelle, laquelle est établie depuis longtemps, était ordonné pour Québec, et que le territoire à tarif de base était étendu d'une façon aussi considérable, cela créerait un précédent en vertu duquel semblable traitement ne pourrait pas être refusé à un très grand nombre d'autres endroits compris dans le territoire de la compagnie Bell, et il est aussi évident que cela pourrait exiger une revision complète de la structure des tarifs qui fut soigneusement considérée et prescrite par la Commission, en 1927. Il est certain que la question n'a pas été suffisamment développée dans ce cas-ci pour justifier la Commission de prendre maintenant en considération une telle revision.

Les requérants allèguent aussi que les abonnés de Loretteville sont dans une position inférieure à celle des résidents de Charlesbourg, Ancienne-Lorette, Giffard, St-Grégoire de Montmorency, Beauport, Courville, etc., qui sont en communication directe avec l'échange de Québec.

Tel que déjà signalé dans le présent jugement, la majorité des abonnés des endroits cités ci-dessus sont desservis par des lignes rurales à plusieurs abonnés, un genre de service bien inférieur à celui des lignes individuelles et à deux abon-

nés de l'échange de Loretteville. De plus, leur taux mensuel pour ce service de ligne rural est plus élevé que celui qui s'applique aux lignes individuelles et à deux abonnés de l'échange de Loretteville. Les requérants ont dit clairement et positivement que les abonnés de Loretteville ne désirent pas revenir au service de lignes rurales, mais qu'ils désirent continuer à bénéficier de leur service de lignes individuelles et à deux abonnés, de sorte que les situations ne sont pas comparables et n'établissent pas, à mon avis, les allégués des requérants. Il n'y a rien devant nous pouvant indiquer si ces abonnés qui ont un service de ligne rurale, ou si un nombre considérable d'entre eux, désireraient avoir le service de ligne individuelle ou à deux abonnés à un taux mensuel, sur la base des tarifs de Québec, de $4.75 pour une ligne individuelle et de $4 pour une ligne à deux abonnés dans le cas d'un téléphone d'affaires en comparaison avec leur présent taux mensuel de $2.85.

Le projet des requérants augmenterait les frais pour les abonnés de Loretteville jusqu'au point indiqué dans le tableau à la page 429 du présent jugement. On remarquera que le changement demandé ne serait qu'à l'avantage des abonnés de Loretteville ayant des lignes d'affaires individuelles et téléphonant à Québec plus de 270 fois par année, et à l'avantage des abonnés de lignes individuelles à domicile qui enregistrent plus de 114 appels, basés sur le prix de 10 cents par appel. Dans le cas du service de ligne à deux abonnés, il faudrait que ces appels dépassent le nombre de 240 dans le cas d'un téléphone d'affaires et celui de 78 dans le cas d'un téléphone domiciliaire avant qu'il ne soit obtenu aucun avantage.

La compagnie de téléphone a produit l'Exhibit nº 11 qui se lit comme suit:—

COMPARAISON DE LA SITUATION CRÉÉE POUR LES ABONNÉS ACTUELS DE LORETTEVILLE COMME RÉSULTAT DE L'APPLICATION DES TARIFS D'ÉCHANGE DE QUÉBEC

Genre de service	Abonnés qui en bénéficieraient		Abonnés qui n'en bénéficieraient pas	
	Nombre	Pour cent	Nombre	Pour cent
Individuel				
Affaires	8	17	38	83
à domicile	10	28	26	72
A deux abonnés				
Affaires	2	15	11	85
à domicile	2	33	4	67
Rural				
Affaires	4	67	2	33
à domicile	1	14	6	86
Total	27	24	87	76

On dit qu'une enquête a été faite pour s'enquérir des montants actuellement payés pour un an par les abonnés de Loretteville, tant pour le service local que pour le service de longue distance à Québec, en comparaison avec les montants qu'ils seraient appelés à payer suivant les tarifs de l'échange de Québec, et on arrive au résultat tel que ci-dessus indiqué, à savoir, qu'en se basant sur le tarif qu'ils ont payé pour téléphoner à Québec au cours de l'année dernière, 24 pour cent seulement des abonnés bénéficieraient du changement et 76 pour cent paieraient plus qu'ils ne le font aujourd'hui tant pour le service local que pour le service de longue distance à Québec.

Sur ce point, divers témoins ont déclaré qu'ils ne téléphonaient pas à Québec aussi souvent qu'ils le désiraient à cause des frais de tarifs et ont exprimé l'opinion que la majorité des abonnés de Loretteville serait prête à payer le tarif d'échange plus élevé de Québec pour permettre la non-limitation des appels entre ces deux échanges. On prétend que le tarif imposé affecte désavantageusement le commerce de certaines maisons de Loretteville, parce que des clients possibles de Québec ne veulent pas payer ce tarif. On a aussi prouvé que dans le cas de quelques compagnies faisant affaires à Loretteville, leurs frais téléphoniques pour

Québec s'établissent à un montant annuel très substantiel, et qu'elles bénéficieraient très largement par le projet des requérants. On peut déclarer, en passant, que cette situation, telle qu'elle existe actuellement n'est pas différente de celle qui existe dans un grand nombre d'endroits dans les provinces de Québec et d'Ontario. Il a toujours été reconnu que le sytème de tarifs de longue distance est un arrangement raisonnable pour des appels entre deux territoires d'échange différents. Ceci constitue la base sur laquelle le système des tarifs de longue distance a été établi et approuvé par la Commission.

On peut comprendre de suite le désir des requérants de faire éliminer les tarifs de longue distance entre les échanges et de faire étendre considérablement le territoire auquel s'applique le tarif de base de Québec afin d'effectuer des réductions dans les frais téléphoniques d'un grand nombre d'abonnés; de plus, les requérants ne sont d'aucune façon concernés quant à l'effet que ceci peut avoir ailleurs. La Commission, toutefois, est dans une position tout à fait différente. Dans tous les cas où des tarifs ou des taux sont prescrits ou ordonnés par la Commission, celle-ci doit prendre soigneusement en considération les principes fondamentaux qui s'appliquent autant qu'il s'agit de la structure des tarifs de téléphone et éviter une directive qui causerait des ajustements défectueux, une disparité injuste ou une préférence indue. Il incombe à la Commission de juger si une directive qu'elle donne va créer une disparité de la nature de celle que la loi des chemins de fer lui ordonne de prohiber. Une situation de la nature de celle qui se présente actuellement devant nous ne peut pas être considérée à part et séparément de la structure entière des tarifs. La Commission a terminé, en 1927, une enquête très approfondie relative aux tarifs du service d'échange local, et les tarifs d'échange locaux applicables aux échanges de Québec et de Loretteville sont tels qu'ils ont été alors prescrits. Le principe d'un tarif de longue distance entre des échanges différents existe depuis un très grand nombre d'années. Cette structure complète des tarifs serait affectée par ce qui est impliqué dans la présente requête, parce qu'il y a un si grand nombre d'autres endroits où des conditions semblables existent, et il est à prévoir qu'ils demanderaient et ne pourraient se faire refuser semblable traitement. Il est impossible de prévoir, avec le très peu de données et de renseignements à notre disposition, l'effet que ceci aurait sur la compagnie de téléphone concernant l'augmentation des dépenses et des frais d'exploitation, ou sur ses revenus. Où la ligne doit-elle être tracée, à dix milles tel que demandé, ou à une autre distance? Ces considérations et bien d'autres sont particulièrement pertinentes.

En d'autres termes, lorsque, comme dans le cas présent, on n'a pas apporté de preuve montrant que les tarifs sont par eux-mêmes déraisonnables ou injustes; lorsque l'on a pas apporté de preuve pour démontrer que les principes fondamentaux sur lesquels ont été basés ces tarifs, sont d'aucune façon défectueux; lorsque la situation entière au sujet des tarifs d'échange locaux a été le sujet d'une enquête très approfondie de la part de la Commission, en 1927, et que rien ne s'est développé depuis pour indiquer la nécessité d'en reviser les conclusions, la Commission doit-elle maintenant considérer qu'elle devrait intervenir dans la structure des tarifs adoptés jusqu'à présent simplement à la suite d'une requête locale de cette nature où la preuve ne fait rien de plus qu'indiquer le désir d'un certain nombre d'abonnés d'obtenir une réduction dans leurs frais de téléphone? Je ne le crois pas.

Dans le dossier il n'est nullement question de Lévis qui est un territoire d'échange séparé. Cet échange toutefois serait compris dans le territoire de l'échange de Québec avec un rayon de dix milles à partir de la cité de Québec, tel qu'impliqué dans la présente requête.

Le même tarif s'applique entre les échanges de Lévis et de Québec que dans le cas des appels entre les échanges de Loretteville et de Québec. Il n'y a pas de plainte devant nous concernant cette situation et, sans doute, les recettes provenant des tarifs entre Lévis et Québec sont beaucoup plus considérables qu'entre

Loretteville et Québec, vu que Lévis a environ 1,217 abonnés et Loretteville 148. Le projet des requérants augmenterait les tarifs des abonnés de Lévis comme suit:

	Frais mensuels
Service d'affaires	
Ligne individuelle,..	de $2.75 à $4.75
Ligne à deux abonnés,..	de $2.25 à $4.00
Service domiciliaire	
Ligne individuelle,..	de $2.05 à $3.00
Ligne à deux abonnés, ...	de $1.85 à $2.50
Téléphone extension	
Service d'affaires...	de $ .80 à $1.05
Service domiciliaire,..	de $ .55 à $ .80
Service de ligne rurale	
Service d'affaires,..	de $1.90 à $2.85
Service domiciliaire,..	de $1.65 à $2.60

Nous n'avons aucune preuve indiquant qu'un tel projet serait satisfaisant à la majorité des abonnés de Lévis. Il existe aussi des territoires d'échange séparés à Charny, Etchemin et Sainte-Pétronille, qui tombent dans le territoire compris dans la présente requête, lesquels seraient aussi affectés.

On peut aussi attirer l'attention sur un autre résultat qui serait une conséquence logique de la présente requête, que les requérants n'ont pas apparemment considéré mais dont la Commission serait requise de prendre connaissance. En vertu de la liste ou du groupement des territoires d'échange prescrit par la Commission en 1927, Québec est dans le groupe 4. Le groupe 4 s'applique aux territoires d'échange ayant un maximum de 20,000 téléphones et le groupe 3 aux territoires d'échange comprenant 20,001 jusqu'à 50,000 téléphones. L'extension du territoire d'échange de Québec telle que demandé ici, agrandirait ce territoire de façon à y inclure au delà de 25,000 téléphones, avec le résultat que la compagnie de téléphone ferait, sans doute, une demande pour faire mettre Québec dans le groupe 3, et je ne sais pas pour quels motifs la requête pourrait être raisonnablement refusée. Dans des conditions semblables, à savoir l'accroissement du nombre des téléphones au delà du maximum fixé pour un groupe, la Commission a récemment rendue des ordonnances autorisant le transfèrement de Granby, de Bowmanville, de Wallaceburg et de Drummondville du groupe 8 au groupe 7. Les tarifs pour les groupes 3 et 4 sont comme suit:

CLASSE DE SERVICE	AFFAIRES		TARIFS MENSUELS DOMICILIAIRES	
	Groupe 3	Groupe 4	Groupe 3	Groupe 4
Ligne individuelle..	$5.50	$4.75	$3.10	$3.00
Ligne à deux abonnés,..	4.50	4.00	2.60	2.50
Ligne rurale, ...	3.25	2.85	3.00	2.60
Téléphone extension,..	1.05	1.05	.80	.80

C'est pourquoi le résultat ultime pourrait bien être que plusieurs milliers d'abonnés du téléphone dans les limites de la cité de Québec et du territoire environnant, subiraient une augmentation substantielle des tarifs afin de diminuer les frais de téléphone payés par un petit nombre d'abonnés de Loretteville qui se mettent souvent en communication avec Québec et qui payent actuellement pour ce service sur une base d'usage, comme c'est aussi actuellement le cas pour les abonnés du téléphone ailleurs, à travers le territoire de la compagnie de téléphone Bell.

Le présente requête demande que la Commission rende une ordonnance enjoignant à la compagnie de téléphone d'effectuer une extension très considérable et un rajustement de son territoire d'échange de Québec ayant pour effet de supprimer comme échanges locaux les territoires des échanges de Lévis, Loretteville, Charny, Etchemin et de Sainte-Pétronille, déjà établis par la compagnie. Remontant à une période de plusieurs années l'on trouve de nombreuses décisions de la Commission arrivant toutes à la même conclusion, à savoir que l'établissement, la subdivision et le rajustement des territoires d'échange d'une

compagnie de téléphone sont des choses concernant la régie interne des affaires de la compagnie au sujet desquelles la Commission n'a pas la compétence d'intervenir; les pouvoirs de la Commission consistent seulement à voir à ce que les tarifs et les frais applicables aux territoires ainsi établis ne soient pas déraisonnables ou injustes. On relève les décisions de la Commission à ce sujet dans les causes suivantes:

Tinkess vs la Cie Bell Téléphone, 20, C.R.C. 249;

Ville de Dundas et al, vs la Cie Bell Téléphone, 31, C.R.C. 352;

Requête de l'Union des municipalités de la Colombie Britannique, 27, C.R.C. 319;

Plainte des villes de Riverside, Técumseh et al, contre la division des territoires d'échange faite par la compagnie Bell Téléphone, dans le district adjoignant Windsor, 31, C.R.C. 381;

Requête de la corporation de Point Grey, C.B., 34, C.R.C. 175;

Requête des résidents de la municipalité de Point Grey, C.B., 31, C.R.C. 387;

Requête de la corporation du canton de York, 34, C.R.C. 170.

Au sujet de la présente requête, les tarifs d'échange locaux sont ceux qui ont été prescrits par la Commission, et les tarifs de longue distance ont aussi été approuvés par la Commission. On n'a pas produit de preuve indiquant qu'ils sont déraisonnables par eux-mêmes ou injustes.

Pour les raisons exposées ci-dessus, la requête doit être renvoyée.

Ottawa le 1er février 1937.

Le commissaire en chef adjoint s'est rallié au jugement ci-dessus.

Le commissaire en chef suppléant s'est rallié aux conclusions du jugement, mais a soumis que, bien que l'établissement, la subdivision et le rajustement des territoires d'échange soient des questions qui concernent l'administration des affaires de la compagnie, la Commission a juridiction pour intervenir lorsqu'il y a une preuve concrète qu'à cause de ou au moyen de telle subdivision ou redistribution, des tarifs déraisonnables et injustes sont imposés.

ORDER No. 53937

In the matter of the application of the Quebec-Montmorency Chamber of Commerce, on behalf of subscribers of the Bell Telephone Company of Canada at Loretteville, Quebec, for an Order directing the Bell Telephone Company to extend the Quebec local exchange area to include all subscribers within ten miles from the City of Quebec.

File No. 3574.351

TUESDAY, the 2nd day of February, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*

Upon hearing the application at the sittings of the Board held at Quebec, January 11, 1937, in the presence of counsel for and representatives of the Bell Telephone Company of Canada and the applicant, and what was alleged—

It is ordered: That the application be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53917

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

WEDNESDAY, the 27th day of January, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders: That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement 39 to Tariff C.R.C. No. E-1829.
Supplement 27 to Tariff C.R.C. No. E-1906.
Supplement 29 to Tariff C.R.C. No. E-1974.
Supplement 29 to Tariff C.R.C. No. E-2248.
Supplement 2 to Tariff C.R.C. No. E-2428.
Supplement 9 to Tariff C.R.C. No. E-2444.
Tariff C.R.C. No. E-2521.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53949

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

THURSDAY, the 4th day of February, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in item 105 of Tariff C.R.C. No. E-2448, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Temiscouata Railway Company's proportion to be reported as shown below.

2. And the Board hereby certifies that the Temiscouata Railway Company's proportion of the normal tolls, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item No. 105 of Tariff C.R.C. No. E-2448, approved herein, is as follows:—

To	Cents per 100 pounds Tariff	Normal
Charny, Que.	6	7½
Drummondville, Que.	6	7½
Manseau, Que.	6	7½
St. Romuald, Que.	6	6½

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53950

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

THURSDAY, the 4th day of February, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item No. 105 of Supplement No. 4 to Tariff C.R.C. No. E-2448, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of the said section 3; the Temiscouata Railway Company's proportion to be reported as shown below.

2. And the Board hereby certifies that the Temiscouata Railway Company's proportion of the normal toll, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item No. 105 of Supplement No. 4 to Tariff C.R.C. No. E-2448, approved herein, is—

To	Cents per 100 pounds Tariff	Normal
Rimouski, Que.	6	7½

H. GUTHRIE,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR DECEMBER, 1936

Railway accidents	169 with	18 killed and	154 injured
Railway accidents at highway crossings	25 with	4 killed and	40 injured
	194	22	194

	Killed	Injured
Passengers	1	21
Employees	5	117
Others	16	56
	22	194

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents	
	New Brunswick
1	Automobile—Drove onto crossing in front of train and was struck. Licence N.B. F-1152.
	Quebec
1	Automobile—Driver failed to stop for crossing. Licence Que. FP-6455.
2	Auto Trucks—Failed to stop for crossing. Licences Que. R-1751; 3716. Que. F-1667.
1	Horse-drawn Vehicle—Chain caught in planks of crossing, unable to get clear, struck by train.
	Ontario
7	Automobiles—Ran into side of train. Licences, Ont. BH-135. Ont. S-5600. Ont. BW-26. Ont. EX-506. Ont. N-59. Ont. CA-7. Ont. W-1057.
1	Auto Truck—Ran into side of train. Licence Ont. 5555-C.
2	Automobiles—Stalled on crossing. Licences, Ont. N-9121. Ont. MB-518.
1	Automobile—Auto driver unable to stop due to icy condition of roadway; struck by train. Licence Ont. CT-314.
1	Auto Truck—Driven onto crossing in front of train and struck by same. Licence Ont. 49613-C.
1	Auto Truck—Driver failed to heed bell and light; struck by train. Licence Ont. 34873-C.
1	Pedestrian—Deaf pedestrian walked into side of train.
	Manitoba
1	Automobile—Stalled on crossing and was struck by train. Licence Man. 36-988.
1	Automobile—Student driver failed to see approaching train and was struck. Licence Man. 8-211.
	Saskatchewan
1	Automobile—Ran into side of train. Licence Sask. 34-178.
1	Horse-drawn Vehicle—Horses becoming frightened, got out of control and ran onto crossing in front of train.
	Alberta
1	Automobile—Ran into side of train. (Licence not given.)
	British Columbia
1	Automobile—Ran into side of train. Licence B.C. 82-009.

Of the 25 accidents at highway crossings, 18 occurred at unprotected crossings and 7 at protected crossings. Fifteen of the accidents occurred during the daylight hours and ten at night.

February 3, 1937.

SUMMARY OF ORDERS ISSUED BY THE BOARD OF RAILWAY COMMISSIONERS

53833. Dec. 30—Declaring C.N. Rys. crossing, second west of Fort Frances Station, Ont., protected to Board's satisfaction.

53834. Dec. 30—Declaring C.N. Rys. crossing, second west of International Bridge, near Fort Frances, Ont., protected to Board's satisfaction.

53835. Dec. 28—Authorizing C.N. Rys. to carry traffic over Unity S.W. Branch from junction with G.T.P. Ry. to Salvador, Sask., 27 miles.

53836. Dec. 28—Authorizing C.N. Rys. to carry traffic over Unity S.W. Branch from mileage 27·0 to 52·0, Sask.

53837. Dec. 28—Authorizing C.N. Rys. to operate under highway bridge at Mileage 29·8 Viking Subd'n, Alta.

53838. Dec. 28—Authorizing C.N. Rys. to operate trains under highway bridge at mileage 28·4 Viking Subd'n, Alta.

53839. Dec. 29—Approving service station contract between Bell Telephone Co., and Crystal Lake Tel. Co.

53840. Dec. 29—Approving service station contract between Bell Telephone Co. and Oliver Corner Tel. Co.

53841. Dec. 31—Approving supplementary agreement between Bell Telephone Co. and Corporation of City of Fort William, Ont.

53842. Dec. 30—Approving plan showing proposed changes in distant signals and interlocking plant at crossing of C.N. Rys. and C.P.R. at Rosetown, Sask.

53843. Dec. 30—Authorizing Alberta Dep't Public Works to construct crossing over C.P.R. in N.E. ¼ Sec. 16-56-17 W4M., at Wostok, Alta.

53844. Dec. 30—Authorizing Ont. Dep't Highways to construct crossing over C.P.R. 400 feet east of Hurkett Station, Ont.

53845. Dec. 30—Authorizing C.P.R. to construct spur to serve Maritime Mining Syndicate in Lots 11 and 12, and cross highway between said lots, in Parish of Chipman, Co. Queens, N.B.

53846. Dec. 30—Rescinding Paragraph 2 of Order 47542, Oct. 20, 1931, authorizing C.N. Rys. and Montreal Tramways to operate over half-interlocking plant at crossing of Broadway Avenue, Montreal, Que.

53847. Dec. 31—Rescinding Order 39684, Oct. 5, 1927, imposing speed restriction crossing of Broadway, Pointe aux Trembles, P.Q.

53848. Jan. 4—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in tariffs filed by C.N. Rys. under sec. 3.

53849. Jan. 4—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, toll published in tariff C.R.C. No. 55 filed by Sydney & Louisburg Ry. under sec. 9.

53850. Jan. 4—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in items 47 and 56 of Supp. 5 to tariff C.R.C. No. 986 filed by Dominion Atlantic Ry. under sec. 9.

53851. Jan. 4—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls pub-
53852. lished in tariffs C.R.C. Nos. 752 and 753 filed by Temiscouata Ry. under sec. 9.

53853. Jan. 4—Authorizing Manitoba Dep't Public Works to construct crossing over C.N. Rys. just west of Westray Siding, Man.

53854. Jan. 4—Authorizing Ont. Dep't Northern Development to construct overhead crossing over C.P.R., at mileage 50·25 Parry Sound Subd'n, Ont.

53855. Jan. 6—Declaring C.N. Rys. crossing 500 feet north of Fraser Junction switch, Edmundston, N.B., protected to Board's satisfaction.

53856. Jan. 6—Declaring C.P.R. crossing at mileage 38·2 Crowsnest Subd'n, Alta., protected to Board's satisfaction.

53857. Jan. 6—Declaring C.N. Rys. crossing at Melville, Sask., protected to Board's satisfaction.

53858. Jan. 8—Declaring Pere Marquette Ry. crossing of Harwich Town Line, three miles west of Ridgetown, Ont., protected to Board's satisfaction.

53859. Jan. 6—Declaring Pere Marquette Ry. crossing of Provincial Highway No. 2A, near Pelton, Ont., protected to Board's satisfaction.

53860. Jan. 6—Declaring C.N. Rys. crossing of Wellington Street, Woodstock, Ont., satisfactorily protected so long as speed limitation of 10 miles an hour is in effect.

53861. Jan. 5—Declaring C.N. Rys. crossing 66th Street, east of North Edmonton Station, Alt., satisfactorily protected so long as speed limitation of 10 miles an hour is in effect and train movements, when not headed by engine, flagged over crossing by member of crew.

53862. Jan. 6—Authorizing C.N. Rys. to remove station shelter at Puce, Que.

53863. Jan. 6—Approving Detroit & Windsor Subway Co., and Detroit & Canada Tunnel Co., Supp. 8 to tariff C.R.C. No. 18 covering tolls to be charged in respect of Detroit Tunnel.

53864. Jan. 6—Approving revised location of crossing to be constructed by Alberta Dep't Public Works over C.P.R. at Hasketh, N.E. ¼ Sec. 12-29-22 W4M., Alta.

63865. Jan. 5—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, toll published in item No. 345-A of Sup. 9 to tariff C.R.C. No. 1006, filed by Dominion Atlantic Ry. by sec. 9.

53866. Jan. 6—Declaring C.P.R. crossing 2·4 miles west of Agincourt Station, Ont., protected to Board's satisfaction.

53867. Jan. 7—Declaring C.N. Rys. crossing of Provincial Highway No. 2 at Woodstock, Ont., protected to Board's satisfaction.

53868. Jan. 8—Authorizing Geo. R. Cooke, Pres., Detroit & Canada Tunnel Co., to prepare and issue tariffs of tolls and fares to be charged for use of Vehicular Tunnel.

53869. Jan. 8—Authorizing Ont. Dep't Northern Development to maintain temporary crossing over C.P.R. immediately west of Selim Station, Ont., until Nov. 30, 1937.

53870. Jan. 7—Requiring New York Central R.R. to establish certain instructions covering westbound and eastbound movements between C.N. Rys. and Michigan Central R.R. interlocker east of Welland and Welland Canal Drawbridge interlocker west of Welland, Ont.

53871. Jan. 11—Authorizing Transcontinental Freight Bureau to issue amendment to its tariff C.R.C. No. 681, Item No. 1220-B, Supp. 11, correcting error in publication of rates on citrus fruits from points taking rate basis 1 rates in Arizona, California, Nevada and Utah to points in Group 12, Winnipeg, Man., so as to read $1.56 per 100 pounds.

53872. Jan. 8—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, toll published in tariff C.R.C. No. 54 filed by Sydney & Louisburg Ry. under sec. 9.

53873. Jan. 8—Authorizing B.C. Dep't Public Works to construct diversion of Island Highway and overhead crossing of Esquimalt & Nanaimo Ry. at mileage 0·83 Cowichan Lake Subd'n, in lieu of existing grade level crossing.

53874. Jan. 12—Declaring C.N. Rys. crossing of Dundas Street, London, Ont., protected to Board's satisfaction.

53875. Jan. 12—Declaring C.N. Rys. crossing of Lincoln Street, Welland, Ont., protected to Board's satisfaction.

53876. Jan. 12—Authorizing C.N. Rys. to reconstruct overhead highway bridge east of Hyde Park Junction, Ont.

53877. Jan. 12—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in tariffs filed by C.N. Rys. under sec. 3.

53878. Jan. 8—Approving service station contract between Bell Telephone Co. and Granby Hill Telephone Ass'n.

53879. Jan. 8—Approving service station contract between Bell Telephone Co. and Cherry River Telephone Ass'n.

53880. Jan. 9—Declaring Grand River Ry. crossing at Main Street, Galt, Ont., satisfactorily protected so long as speed limitation of 3 miles an hour is in effect, and all freight movements over crossing preceded by a flagman.

53881. Jan. 11—Amending Order 53563, Oct. 9, 1936, by substituting the word "railway" for the word "highway" in the recital and operative parts, and amending Order 53820, Dec. 23, 1936, by striking out words "under the highway bridge" and substituting therefor the words "over the railway bridge" in recital and operative portion.—C.N. Rys. bridge at mileage 109·1 Viking Subd'n, Alta.

53882. Jan. 11—Amending Order 53500, Sept. 28, 1936, by striking out paragraph 2 and substituting therefor clause directing that 75 per cent of cost of work, not exceeding $46 800, be paid out of vote No. 420, and remainder, not exceeding $7,800, be paid 50 per cent by Ont. Dept. of Highways and 50 per cent by C.N. Rys.

53883. Jan. 11—Authorizing C.N. Rys. to cross road allowance between tps. Pembroke and Stafford with proposed spur for Pembroke Shook Mills, Ltd., at Pembroke, Ont.

53884. Jan. 11—Authorizing Esquimalt & Nanaimo Ry. to construct spur to serve Olympic Logging Co., Ltd., at mileage 110·1 Victoria Subd'n, Vancouver Island, B.C.

53885. Jan. 11—Approving plan showing proposed relocation of C.N. Rys. station and freight shed building opposite Plessis Street, Nicolet, Que.

53886. Jan. 12—Authorizing C.N. Rys. to install interlocking plant at Lorneville, Ontario.

53887. Jan. 15—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, toll published in item 4C of Supp. 7 to tariff C.R.C. No. 879, filed by Dominion Atlantic Ry. under sec. 9.

53888. Jan. 14—Amending Orders 53578 and 53598 by substituting the word "railway" for the word "highway" in the recital and operative part, and authorizing C.N. Rys. to use and operate railway bridges over north and south road allowance at mileage 28·4 and 29·8 Viking Subd'n, Alta.

53889. Jan. 15—Declaring C.N. Rys. crossing, second south of Newmarket, Ont., protected to Board's satisfaction.

53890. Jan. 15—Declaring C.N. Rys. crossing north of Fossmill, Ont., protected to Board's satisfaction.

53891. Jan. 15—Declaring C.N. Rys. crossing of Logan Avenue, Brooklands, Man., satisfactorily protected, so long as present speed limitation of 6 miles an hour is in effect.

53892. Jan. 16—Extending until April 1, 1937, time within which C.N. Rys. may install bell and wigwag at crossing of Gouin Boulevard, mileage 5·6 Montfort Subd'n, Que.

53893. Jan. 15—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in item 170D of Supp. 8 to Tariff C.R.C. No. E-4645 filed by C.P.R. under sec. 9.

53894. Jan. 15—Authorizing C.P.R. to construct spur to serve Montreal Refrigerating & Storage, Ltd., at Montreal, Que.

53895. Jan. 15—Authorizing B.C. Dep't Public Works to divert highway across C.N. Rys. near west end of bridge over Fraser river at Prince George, B.C.

53896. Jan. 16—Authorizing C.P.R. to construct spur to serve Building Products, Ltd., at Pont Rouge, Que.

53897. Jan. 16—Authorizing that regular highway crossings be constructed in lieu of private crossings of C.P.R. at mileage 70·7 and 70·8, Ste. Agathe Subd'n, Que.

52898. Jan. 18—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in Supp. 13 to tariff C.R.C. No. E-1745 filed by C.N. Rys. under sec. 3.

53899. Jan. 16—Approving service station contract between Bell Telephone Co. and La Cie de Telephone de Papineau-Abbotsford.

53900. Jan. 18—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in Supp. 19 to tariff C.R.C. No. E-1745 filed by C.N. Rys. under sec. 3.

53901. Jan. 20—Appointing D. G. Kilburn, Division Engineer, as Acting Chief Engineer of the Board.

53902. Jan. 20—Declaring C.N. Rys. crossing just south of Letellier Station, Man., protected to Board's satisfaction.

53903. Jan. 21—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls
53904. published in supplements and tariffs filed by the Dominion Atlantic Ry. under sec. 9.

53905. Jan. 21—Declaring C.N. Rys. crossing 60 feet north of Mill View Station, P.E.I., protected to Board's satisfaction.

53906. Jan. 21—Declaring Essex Terminal Ry. crossing of Tecumseh Road, Windsor, Ont., satisfactorily protected so long as present speed limitation of 10 miles an hour is in effect and all switching movements protected by flagman.

53907. Jan. 22—Requiring C.P.R. to operate its trains over crossing east of Blairmore Station (Fifth Avenue) at a speed not exceeding 10 miles an hour, provided cars left standing on business track are kept back 20 to 30 feet from each side of footwalk for pedestrians.

53908. Jan. 22—Refusing application of Nova Scotia Dep't Highways for a contribution of 70 per cent of cost of installing double bells and wigwags at crossing at McIntyre Lake, N.S.

53909. Jan. 22—Authorizing C.P.R. to construct branch line to serve Chrysler Corpr'n of Canada, Ltd., at Windsor, Ont.

53910. Jan. 25—Declaring C.P.R. crossing of Gibson Street, South Devon, N.B., satisfactorily protected so long as speed limitation of six miles an hour is in effect.

53911. Jan. 25—Declaring C.N. Rys. crossing, first east of Unionville, Ont., satisfactorily protected so long as speed limitation of 10 miles an hour is in effect.

53912. Jan. 22—Authorizing C.N. Rys. to install two wigwags without bells, in lieu of lightning flash signals at crossing of Glasgow Street, Guelph, Ont.

53913. Jan. 23—Refusing application of P.E.I. Dep't Public Works for removal of all buildings obstructing view at C.N. Rys. crossing at Mount Stewart, P.E.I.

53914. Jan. 25—Authorizing Essex Terminal Ry. to construct siding across Tecumseh Road, Windsor, Ont.

53915. Jan. 25—Authorizing C.N. Rys. to operate their trains over subway at Plains Road, Burlington, Ont.

53916. Jan. 25—Dismissing complaint of Achille Lizotte, St. Roch des Aulnaies, Que., against flooding of his land by water from C.N. Rys. off-take ditch between Lots 310 and 311.

53917. Jan. 27—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in tariffs filed by C.N. Rys. under sec. 3.

53918. Jan. 25—Declaring C.N. Rys. crossing, first north of South Canora, Sask., protected to Board's satisfaction.

53919. Jan. 28—Authorizing town of Mattawa, Ont., to extend George Street across C.P.R.

53920. Jan. 27—Authorizing Manitoba Dep't Public Works and Labour to construct highway crossing over C.N. Rys. at mileage 84 Flin Flon Subd'n, Man.

53921. Jan. 27—Declaring G.N.R. crossing of Cordova Street, Vancouver, B.C., satisfactorily protected so long as present speed limitation of 8 miles an hour is in effect.

53922. Jan. 28—Declaring G.N.R. crossing of Georgia Street, Vancouver, B.C., satisfactorily protected so long as speed limitation of 8 miles an hour is in effect.

53923. Jan. 30—Authorizing Thousand Islands Bridge Co. to construct two bridges across the St. Lawrence river, one between Ivy Lea and Hill Island, Ont.; the other being between Hill Island, Ont., and Wellesley or Wells Island, N.Y.

53924. Jan. 29—Approving C.N. Rys. plan showing relocation of dwarf signal No. 4 at Bayview Interlocking plant, at junction of Oakville and Dundas Subd'ns, Ont.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of the Levis Chamber of Commerce, Levis, Quebec, for an Order requiring the Canadian National Railways to remove the obstruction to the view caused by a point of rock, or cliff, at the crossing on St. Lawrence street, known as Gibson's crossing, west of Hadlow station, Levis, Quebec, at mileage 2·9 Drummondville subdivision.

File No. 27652.6

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER:

This is an application of the Chamber of Commerce of the district of Levis, in the province of Quebec, for the removal of an obstruction to the view at a grade crossing on St. Lawrence street, known as Gibson's crossing, at a point where the said street is crossed by the line of the Canadian National Railways, known as the Drummondville subdivision, at mileage 2·9. The application was heard at Quebec on 12th day of January, 1937, in the presence of representatives of the Chamber of Commerce of the District of Levis and of the Canadian National Railways.

St. Lawrence street is what is known as a secondary highway running from Levis to the Quebec bridge. It is a paved highway within the jurisdiction of the municipality of Levis, but the roadway known as highway No. 3, which is located on the top of a cliff, is the provincial main highway. St. Lawrence street runs in an easterly and westerly direction at the foot of this cliff and accommodates a considerable amount of travel from Levis to the Quebec bridge because travel upon St. Lawrence street avoids the steep grades which exist upon highway No. 3. Gibson's crossing has not been protected in any way up to the present time, except by the usual railway crossing signs. Some ten years ago a fatal accident occurred at this crossing, and since 1932 there has been a speed limit on trains passing over the crossing of fifteen miles per hour.

There are 14 regular train movements per day (including shunters) over this crossing and, in addition thereto, about 15 extra passenger trains and snowploughs per month passing over same.

On April 29, 1936, another accident occurred at this crossing whereby two persons were seriously injured. After the last-mentioned accident, the Chamber

of Commerce took the matter up and made application to the Board for the improvement of the sight lines at the said crossing, which would involve the removal of a considerable portion of the cliff which lies to the east of the crossing, and which now protrudes up to the railway right of way upon the south side thereof. After receipt of the above application the Board caused an inspection to be made of Gibson's crossing, and the Board's Inspector made a report thereon. Upon receipt of this report, the Board made an Order on May 13, 1936, whereby it was ordered that, so long as the speed restriction of fifteen miles an hour remained in force and observed, the said crossing was sufficiently protected. After the above Order issued, the applicant asked for a hearing of the application and the same was heard at Quebec as above mentioned.

From the evidence submitted at the hearing and from the photographs and plans filed by the various parties, I am satisfied that the sight line looking easterly by a person approaching the railway track from the south side, is seriously obstructed by the cliff mentioned, and that the removal of a portion of this cliff should be undertaken in the interests of the travelling public and also of the railway company.

It was estimated by an engineer of the railway company that the cost of removing a sufficient amount of the cliff to improve the view would be about $15,000. This estimate was based on a price of $4 per yard for blasting and removal of rock, but the applicant maintained that the work could be performed by local contractors for less than half of the above amount. In my opinion, this work should be undertaken for the protection of the public, who make use of Gibson's crossing, and I think in a case of this kind a contribution of 70 per cent of the cost of the work might be made from the parliamentary appropriation under Vote No. 420 of 1936. The municipality of Levis and the railway company should jointly contribute the remaining 30 per cent of the above cost, and an order should be made accordingly. Public tenders should be called for this work and these tenders should be passed upon by the engineers of this Board before any contract is let. Plans should be prepared by the railway company showing the work to be performed, and upon approval of these plans and the letting of the contract all work should be carried out under the supervision of the railway company. The order should contain a provision that the contribution from the above vote should be 70 per cent of the actual cost of the work, but should in no case exceed the sum of $10,500.

The hearing of the application at Quebec, on 12th instant, was adjourned in order that the municipal council of Levis might consider the question of contributing to this work in the proportion above set out. The municipality of Levis has now sent a formal communication to the Board agreeing to pay a contribution to the above work of 15 per cent upon an estimated expenditure of $15,000.

An order will be made upon the above terms and conditions.

Ottawa, January 21, 1937.

The Assistant Chief Commissioner and the Deputy Chief Commissioner concurred.

Requête de la Chambre de Commerce de Lévis, Lévis, Québec, demandant qu'il soit rendu une ordonnance enjoignant aux chemins de fer Nationaux du Canada d'enlever l'obstruction à la vue causée par une pointe de rocher ou de falaise au passage situé sur la rue St-Laurent, connu sous le nom de traverse Gibson, à l'ouest de la station de Hadlow, à Lévis, Québec, au mille 2·9 de la subdivision de Drummondville.

Dossier n°. 27652.6

JUGEMENT

GUTHRIE, COMMISSAIRE EN CHEF:

Il s'agit ici d'une requête de la Chambre de Commerce du district de Lévis, dans la province de Québec, pour l'enlèvement d'une obstruction à la vue au passage à niveau de la rue St-Laurent, connu sous le nom de traverse Gibson, à un endroit où la dite rue est croisée par la ligne des chemins de fer Nationaux du Canada connue sous le nom de la subdivision de Drummondville, au mille 2·9. Cette requête fut entendue à Québec le 12 janvier 1937 en présence des représentants de la Chambre de Commerce du district de Lévis et de ceux des chemins de fer Nationaux du Canada.

La rue St-Laurent est reconnue comme un chemin secondaire qui s'étend de Lévis au pont de Québec. C'est une route pavée qui est sous la juridiction de la municipalité de Lévis, mais le chemin désigné comme la route n° 3, lequel est situé sur le sommet d'une falaise, est la principale route provinciale. La rue St-Laurent va de l'est à l'ouest au pied de cette falaise et est utilisée par un trafic considérable entre Lévis et le pont de Québec, parce que le trafic sur la dite rue St-Laurent évite les pentes escarpées qui existent sur la route n° 3. La traverse Gibson n'a pas été protégée d'aucune façon jusqu'à présent, sauf par les enseignes ordinaires indiquant le croisement de chemin de fer. Il y a environ dix ans, un accident fatal est survenu à ce passage, et depuis 1932, il y a eu une restriction de vitesse de 15 milles à l'heure imposée aux trains qui croisent ce passage.

Il y a quatorze mouvements réguliers de trains par jour, y compris les manœuvres (shunters) à ce passage, et en plus, il y a environ par mois quinze trains de voyageurs supplémentaires et des chasse-neige qui croisent le dit passage.

Le 29 avril 1936, il est survenu un autre accident à ce passage dans lequel deux personnes furent grièvement blessées. A la suite de ce dernier accident, la Chambre de Commerce prit l'affaire en main et adressa une requête à la Commission pour l'amélioration des lignes de vision au dit passage, ce qui impliquerait l'enlèvement d'une partie considérable de la falaise qui se trouve à l'est du passage, et qui s'avance maintenant jusqu'à l'emprise du chemin de fer, du côté sud. Après la réception de la requête ci-dessus, la Commission fit faire une inspection de la traverse Gibson et l'inspecteur de la Commission fit ensuite son rapport. Après avoir reçu ce rapport, la Commission rendit une ordonnance le 13 mai 1936, par laquelle il fut arrêté qu'aussi longtemps que la restriction de vitesse de 15 milles à l'heure serait en vigueur et observée, le dit passage était suffisamment protégé. Après que l'ordonnance ci-dessus fut rendue, la requérante demanda que sa requête fût entendue et celle-ci fût instruite à Québec, tel que ci-dessus mentionné.

Je suis persuadé par la preuve soumise lors de l'audition et par les photographies et les plans produits par les diverses parties que les lignes de vision dans la direction de l'est pour une personne qui s'approche de la voie ferrée en venant du côté sud sont sérieusement obstruées par la falaise déjà mentionnée, et que l'enlèvement d'une partie de cette falaise devrait être effectué dans l'intérêt du public voyageur et aussi de la compagnie de chemin de fer.

Un ingénieur de la compagnie de chemin de fer a estimé que le coût d'enlèvement d'une partie suffisante de la falaise pour améliorer la vue serait d'environ $15,000.00. Cette évaluation était basée sur le prix de $5.00 la verge pour le sautage et l'enlèvement du roc, mais la requérante a prétendu que l'ouvrage pouvait être exécuté par des entrepreneurs locaux pour moins que la moitié du montant ci-dessus. A mon avis, cet ouvrage devrait être exécuté en vue de la protection du public qui utilise la traverse Gibson, et je crois que dans un cas comme celui-ci, une contribution de 70 pour cent du coût des travaux pourrait être allouée à même le subside parlementaire de 1936 sous le crédit portant le n° 420. La municipalité de Lévis et la compagnie de chemin de fer devraient contribuer conjointement dans la proportion de 30 pour cent qui reste du coût ci-dessus, et une ordonnance devrait être rendue en conséquence. Des soumissions publiques devraient être sollicitées pour cet ouvrage, et ces soumissions devraient être examinées par les ingénieurs de cette Commission avant qu'aucun contrat ne soit accordé. La compagnie de chemin de fer devrait préparer des plans montrant les travaux devant être exécutés, et après que ces plans auront été approuvés et que le contrat aura été accordé, tous les travaux devraient être exécutés sous la surveillance de la compagnie de chemin de fer. L'ordonnance devrait contenir une disposition à l'effet que la contribution à même le crédit ci-dessus mentionné soit de 70 pour cent du coût actuel des travaux, mais ne dépasse en ancun cas la somme de $10,500.00.

L'audition de la requête à Québec, le 12 du courant, fut ajournée pour permettre au conseil municipal de Lévis de prendre en considération la question de sa contribution à cet ouvrage dans la proportion ci-dessus mentionnée. La municipalité de Lévis a, depuis, fait parvenir à la Commission une communication formelle par laquelle elle consent à contribuer pour les travaux ci-dessus dans une proportion de 15 pour cent du coût estimé de $15,000.00.

Il sera rendu une ordonnance dans les termes et conditions ci-dessus mentionnés.

OTTAWA, le 21 janvier 1937.

Le Commissaire en chef adjoint et le Commissaire en chef suppléant se sont ralliés au jugement ci-dessus.

ORDER No. 53989

In the matter of the application of the Chamber of Commerce of the District of Lévis, in the Province of Quebec, hereinafter called the "Applicant," for an Order requiring the Canadian National Railways to remove the obstruction to the view caused by a point of rock, or cliff, at the crossing of St. Lawrence Street, known as Gibson's Crossing, west of Hadlow Station, Quebec, mileage 2·9 Drummondville Subdivision.

File No. 27652.6

SATURDAY, the 13th day of February, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*

Upon hearing the application at the sittings of the Board held at Quebec, January 12, 1937, in the presence of counsel for and a representative of the applicant and the railway company, and what was alleged; and upon the consent of the City of Lévis, filed,—

It is ordered:

1. That the Municipality of the City of Lévis be, and it is hereby, authorized to remove the obstruction to the view caused by a point of rock, or cliff,

at the crossing of St. Lawrence street by the Canadian National Railways west of Hadlow Station, in the province of Quebec, mileage 2·9 Drummondville Subdivision, shown on Canadian National Railway plan dated January 5, 1937, on file with the Board under file No. 27652.6.

2. That public tenders be called for the proposed work, such tenders to be passed upon by an engineer of the Board before any contract is let.

3. That the Canadian National Railways file with the Board a plan showing the work to be performed, and upon the approval of such plans and the letting of the contract, all work to be carried out under the supervision of the railway company.

4. That, with the approval of the Governor in Council by Order in Council P.C. 265, dated February 10, 1937, seventy per cent of the cost of the said work, not exceeding, however, the sum of $10,500, be paid out of the fund appropriated for the purpose under Department of Railways and Canals Vote No. 420, Special Supplementary Estimates 1936-37; and that the remainder of such cost be divided equally between the Canadian National Railways and the City of Lévis.

5. That the approval of the Governor in Council by the said Order in Council herein referred to is subject to the proviso that the applicant shall agree with His Majesty, represented by the Minister of Transport, in such form as the said minister may approve, that all persons employed in the execution of the works herein authorized shall, while so employed during the continuance of the execution of the works, be paid fair wages and that the working hours of such persons shall not exceed eight hours per day nor forty-four hours per week while so employed, all in accordance with the provisions of The Fair Wages and Hours of Labour Act, 1935.

H. GUTHRIE,
Chief Commissioner.

Application of Mr. Olivier Menard for the re-opening of a crossing on the line of The Canadian Pacific Railway, at Mileage 65·38 Lachute Subdivision, about ½ mile from Pointe au Chene Station, in the Province of Quebec.

(File No. 39976)

JUDGMENT

GUTHRIE, CHIEF COMMISSIONER:

This is an application by Mr. Olivier Menard for the re-opening of a crossing on the line of the Canadian Pacific Railway, mileage 65·38 Lachute Subdivision, in the province of Quebec The application was heard in Montreal on November 12, 1936, in the presence of counsel for the applicant and for the Canadian Pacific Railway Company.

It appears that on July 15, 1936, the Municipality of Grenville wrote a letter to the Board stating that the applicant had requested the council to make application for the opening of a public crossing at the point in question in this application, at which point a private crossing had recently been closed; but the Municipality of Grenville did not proceed further in the matter. Counsel for the applicant stated at the opening of the hearing that all the applicant desired was to have the Board make a finding as to whether there is really a right of crossing at the point in dispute.

It would appear from the evidence submitted that a roadway, or something in the nature of a roadway, had existed at this point for many years prior to the construction of the railway. On July 14, 1876, Mr. Alexander Pridham, then owner of the land in question, made a conveyance to the Quebec, Montreal,

Ottawa and Occidental Railway Company of a right of way through his property, and it is stated in the said conveyance that:—

> "This sale is first made subject by the said Commissioners to erect within six months from the date hereof and maintain in future on each side of the railway, fences of the height and strength of an ordinary division fence with sliding gates opposite one to the other commonly called hurdle gates, with proper fastenings, on each side of the piece of land presently sold, to allow the said vendor, his successors and assigns to go across the said railway either on foot or in vehicles at any time; at last subject by said commissioners on representation to fulfil and execute towards the vendor or representatives all and every charges, obligations and clauses to which they are or shall be liable under all the general laws of this country regulating railways."

There is no doubt that a crossing was constructed at this point with the necessary fences and gates soon after the railway was constructed through the property. At the time of the above conveyance Mr. Pridham was the owner of the land upon both sides of the railway right of way, and the construction of the railway severed his property. The larger part of his property was upon the south side of the railway running from the railway to the Ottawa River. North of the railway track the property extended to a public roadway which is still in existence. At the time of the above conveyance, this property seems to have been used altogether as farm property. It was subsequently conveyed to Mr. E. St. Amand by conveyance dated August 4, 1896. At the time of this conveyence the railway crossing was in existence and was used as a private crossing. It appears that in the year 1922 the applicant purchased from Mr. St. Amand the land lying upon the south side of the railway track and running down to the Ottawa river, but he did not obtain a deed of this property until November 12, 1927. In the conveyance to the applicant no mention is made of the crossing in question, or of a right of way through Mr. St. Amand's land, but the applicant stated in his evidence that when he made purchase of the land Mr. St. Amand assured him that he had the right to the railway crossing as it had theretofore existed, and also an easement or right of way through Mr. St. Amand's land on the north side of the railway up to the public highway. After the purchase of the property by the applicant in 1922, the applicant erected a saw-mill and five summer cottages, or bungalows, thereon near the Ottawa river, and, since the erection of these buildings, the crossing has been used for the purposes of the saw-mill and by the occupants of the cottages practically as a public crossing.

During the early summer of 1936 an accident took place at this crossing through a collision between a motor-truck and a train of the Canadian Pacific Railway Company, and after this accident the railway company took steps to close the crossing. On June 5, 1936, the railway company removed the gates at the crossing and erected fences across the roadway completely closing the crossing. The applicant was notified by the railway company that the crossing had been permanently closed both as a private crossing and as a public crossing. Upon several occasions, after June 5, 1936, the applicant cut away the fences erected by the railway company. The company promptly repaired the fences and in September, 1936, instituted a prosecution against the applicant for destruction of railway property, etc.

In answer to the application the railway company contends that it had the right to close this crossing without asking permission of the Board so to do. The company asserts that as the applicant is not the owner of the property lying to the north of the railway track he has no right to a private crossing. The railway company asserts that although this crossing has been used for a number of

years as a public crossing, it has never been legally authorized as such, and that in closing the crossing the company acted within its strict legal rights. A number of decisions of this Board and of the Courts were cited in support of the contention of the railway company. If the facts in the cases cited by counsel for the railway company were similar to the facts in the present application, I would have no hesitation in finding that the applicant had no legal right to the maintenance of a private crossing at the point in question, and that the use of the crossing as a public crossing was not authorized by law. However, in my opinion, there are facts and circumstances in connection with this application which distinguish it from the cases cited by counsel for the railway company upon the hearing.

It is established by the evidence that a farm or private crossing was originally constructed by the railway company at this point shortly after 1876, and that the crossing was kept open and maintained by the railway company down to the summer of 1936. The severance of the ownership of the land on the north and south sides of the track took place in the year 1922, when the applicant made an agreement to purchase the land from Mr. St. Amand and entered into possession of the land on the south side of the track, upon an express agreement with Mr. St. Amand, the vendor, that the applicant would retain all rights in respect of the crossing, as well as the right to proceed over Mr. St. Amand's land to the highway upon the north side of the railway track. The applicant subsequently erected a saw-mill and five summer cottages upon his property, near the Ottawa river, under the impression that he had the right to cross the railway at this crossing and proceed northerly through Mr. St. Amand's property to the highway. As a matter of fact, this crossing has been used by all persons in connection with saw-mill business and by tenants who occupy the summer cottages from year to year. To all intents and purposes the crossing has been used for many years as a public crossing, and the roadway leading from the crossing northward through Mr. St. Amand's property has been used as a public roadway. The public use of this roadway and crossing for at least fifteen years has been known to the company. The company made no objection to such use and always maintained the crossing until June, 1936. As will be seen from the plan filed, if this crossing is closed, the applicant will be denied both ingress and egress to and from his property to the highway. Applicant's property is cut off to the north by the railway and on the south by the Ottawa river, and neither on the east nor on the west side has he any access to a highway. If deprived of passage over the railway, his property will be completely enclosed. It is essential for the applicant's business in connection with the saw-mill, and for his tenants, that he have an outlet to the highway on the north.

In my opinion, the above facts and circumstances pertaining to this application, and also the special provision contained in the conveyance of 1876 previously set out, distinguish this case from the cases cited by counsel for the railway company upon the hearing. In regard to the creation of an easement, or right of way, I would also refer to the provisions of the Civil Code of Quebec, sections 499, 500, 545, 556 and 1499.

Counsel for the railway company stated that the railway company does not object to the opening of a public highway at this point, but it submits that the cost of opening such a highway would be in the neighborhood of from $1,200 to $1,400, and the company will not agree to payment of any portion of this cost. The land lies in the municipality of Grenville and the council of the municipality has made no intimation of its willingness either to authorize the opening of a public road at this point, or to contribute any portion of the cost of so doing.

After the hearing was concluded in Montreal, the Board instructed one of its engineers to make an examination and report in respect of this crossing

and in his report the Board's engineer has stated that a satisfactory crossing could be constructed for a sum of from $350 to $400, at a point very near to that at which the former crossing existed. The applicant has expressed his willingness to pay one-third of the cost of constructing this crossing; his contribution not to exceed in the whole the sum of $133.33. I think the railway company should contribute the remaining two-thirds of this cost. In the conveyance of 1876, above recited, the railway company is bound "to execute towards the vendor or representatives all and every charge, obligation and clause to which it is or shall be liable under all the general laws of this country regarding railways". The Board's engineer has reported as follows:—

> "It appears to me that in any case, if the crossing is opened either as a private or public crossing, the improvement to the sight lines should be carried out"

and later on:—

> "I feel that in either case it should be compulsory that the sight lines be established in the east, as recommended in my report."

I would order the railway company to reestablish forthwith the gates and the roadway over the railway tracks as they existed prior to June 5th, 1936. The railway company should be ordered to rebuild the crossing and improve the sight lines as recommended in the report of the Board's engineer, for use in future as a private crossing. The work should be completed not later than June 30, 1937. The applicant should be ordered to reimburse the railway company to the extent of one-third of the cost of such construction and improvement, but the applicant's proportion of the cost not to exceed $133.33.

OTTAWA, FEBRUARY 3, 1937.

The Deputy Chief Commissioner and Commissioner Stoneman concurred.

Requête de M. Olivier Ménard, demandant la réouverture d'un passage sur la ligne du chemin de fer Canadien du Pacifique, au mille 65·38 de la subdivision de Lachute, à environ un demi-mille de la station de Pointe-au-Chêne, dans la province de Québec.

(Dossier nº 39976.)

JUGEMENT

GUTHRIE, COMMISSAIRE EN CHEF:

Il s'agit ici d'une requête de la part de M. Olivier Ménard, demandant la réouverture d'un passage sur la ligne du chemin de fer Canadien du Pacifique, au mille 65.38 de la subdivision de Lachute, dans la province de Québec. Elle fut entendue à Montréal, le 12 novembre 1936, en présence des avocats du requérant et de la compagnie du chemin de fer Canadien du Pacifique.

Il appert que le 15 juillet 1936, la municipalité de Grenville adressait une lettre à la Commission, déclarant que le requérant avait demandé au conseil d'adresser une requête demandant l'ouverture d'un passage public à l'endroit dont il est question dans la présente requête et où un passage privé avait été récemment fermé; la municipalité de Grenville, cependant, ne procéda pas davantage au sujet de sa requête. L'avocat du requérant déclara au début de l'audition que tout ce que le requérant désirait était de faire constater par la Commission s'il existe réellement un droit de passage à l'endroit en litige.

Il semblerait de par la preuve qui fut soumise qu'une chaussée, ou quelque chose dans la nature d'une chaussée, avait existé à cet endroit depuis plusieurs

années avant la construction du chemin de fer. Le 14 juillet 1876, M. Alexander Pridham, alors propriétaire du terrain en question, fit un transport d'un droit de passage à travers sa propriété à la compagnie de chemin de fer, Quebec, Montreal Ottawa and Occidental, et dans ledit acte de transport, il est déclaré que—

> "Cette vente est d'abord faite sujette à l'obligation de la part desdits commissaires d'ériger dans les six mois à compter de la date des présentes et d'entretenir à l'avenir des deux côtés du chemin de fer des clôtures de la hauteur et de la résistance d'une clôture ordinaire de division avec barrières mobiles en face l'une de l'autre appelées communément des barrières à claire-voie, pourvues de bonnes fermetures, de chaque côté du morceau de terrain présentement vendu, pour permettre audit vendeur, à ses successeurs et ayants droit de traverser ledit chemin de fer à pied ou en voiture en tout temps; finalement, cette vente est sujette à l'obligation de la part desdits commissaires de remplir et d'exécuter, sur représentation, envers le vendeur ou ses représentants toutes et chacune des charges, obligations et clauses auxquelles ils sont ou seront tenus en vertu des lois générales de ce pays réglementant les chemins de fer."

Il n'y a pas de doute qu'un passage fut construit à cet endroit avec les clôtures et les barrières nécessaires aussitôt après la construction du chemin de fer à travers cette propriété. Au moment du transport ci-dessus mentionné, M. Pridham était le propriétaire du terrain des deux côtés de l'emprise du chemin de fer, et la construction du chemin de fer sépara sa propriété. La partie la plus considérable de sa propriété se trouvait du côté sud du chemin de fer et s'étendait dudit chemin de fer à la rivière Ottawa. Du côté nord de la voie ferrée, la propriété s'étendait jusqu'à une chaussée publique qui existe encore. Au moment du transport ci-dessus, il appert que cette propriété était entièrement utilisée comme une propriété de ferme. Elle fut subséquemment transportée à M. E. St-Amand par acte de transport, en date du 4 août 1896. Au moment de ce transport, le passage du chemin de fer était en existence et utilisé comme passage privé. Il appert que durant l'année 1922, le requérant achetait de M. St-Amand le terrain situé du côté sud de la voie ferrée et s'étendant jusqu'à la rivière Ottawa, mais il n'obtint pas de titre à cette propriété avant le 12 novembre 1927. Dans l'acte de transport en faveur du requérant, il n'est pas fait mention du passage en question, ou d'un droit de passage à travers le terrain de M. St-Amand, mais le requérant déclara dans son témoignage que lorsqu'il fit l'acquisition du terrain, M. St-Amand lui assura qu'il avait le droit au passage du chemin de fer, tel qu'il avait existé jusqu'à ce moment, de même qu'à une servitude ou à un droit de passage à travers le terrain de M. St-Amand, du côté nord du chemin de fer jusqu'au chemin public. Après l'achat de la propriété par le requérant, en 1922, celui-ci y érigea un moulin à scie et cinq maisons d'été ou maisons de campagne, près de la rivière Ottawa, et depuis l'érection de ces constructions, le passage a été utilisé comme pratiquement un passage public pour les fins du moulin à scie, de même que par ceux qui habitent les maisons d'été.

Au commencement de l'été de 1936, il y eut un accident à ce passage par suite d'une collision entre un camion-automobile et un train de la compagnie du chemin de fer Canadien du Pacifique; après cet accident, la compagnie de chemin de fer prit des mesures pour fermer le passage. Le 5 juin 1936, la compagnie de chemin de fer enleva les barrières audit passage et érigea des clôtures à travers la chaussée, fermant ainsi complètement le passage. Le requérant fut avisé par la compagnie de chemin de fer que ledit passage avait été fermé d'une manière permanente comme passage privé et comme passage public. A plusieurs occasions après le 5 juin 1936, le requérant enleva les clôtures érigées par la compagnie de chemin de fer. La compagnie réparait les clôtures promptement et au mois de septembre 1936, elle institua des procédures contre le requérant pour cause de destruction de la propriété du chemin de fer, etc.

En réponse à la présente requête la compagnie de chemin de fer allègue qu'elle avait le droit de fermer ce passage sans demander la permission à la Commission. La compagnie prétend que comme le requérant n'est pas le propriétaire du terrain qui se trouve du côté nord de la voie ferrée il n'a pas droit à un passage privé. La compagnie de chemin de fer affirme que quoique ce passage ait été utilisé depuis un certain nombre d'années comme un passage public ledit passage n'a jamais été légalement autorisé comme tel, et qu'en le fermant la compagnie a agi dans les limites de ses droits stricts. Un certain nombre de décisions de cette Commission et des tribunaux furent citées à l'appui de l'affirmation de la compagnie de chemin de fer. Si les faits dans les causes citées par l'avocat de la compagnie de chemin de fer étaient semblables à œux de la présente requête, je n'hésiterais pas à constater que le requérant n'avait pas le droit légal au maintien d'un passage privé à l'endroit en question, et que l'usage du passage comme un passage public n'était pas autorisé par la loi. A mon avis, cependant, il y a des faits et des circonstances en rapport avec la présente requête qui la distinguent des causes citées par l'avocat de la compagnie de chemin de fer lors de l'audition.

La preuve établit qu'un passage de ferme ou privé fut à l'origine construit par la compagnie de chemin de fer à cet endroit peu de temps après 1876, et que le passage fut tenu ouvert et maintenu par la compagnie de chemin de fer jusqu'à l'été de 1936. La séparation de la propriété du terrain du côté nord et du côté sud de la voie eut lieu en 1922, alors que le requérant passa un contrat pour acheter le terrain de M. St-Amand et prit possession du dit terrain du côté sud de la voie avec une entente explicite avec M. St-Amand, le vendeur, que le requérant conserverait tous les droits en rapport avec le passage aussi bien que le droit de passer sur le terrain de M. St-Amand jusqu'au chemin public, du côté nord de la voie ferrée. Le requérant érigea subséquemment sur sa propriété un moulin à scie et cinq maisons d'été près de la rivière Ottawa, étant sous l'impression qu'il avait le droit de croiser le chemin de fer à ce passage et de continuer vers le nord, à travers la propriété de M St-Amand, jusqu'au chemin public. Comme question de fait, ce passage a été utilisé par toutes les personnes en rapport avec les activités du moulin à scie et par les locataires qui occupent les maisons d'été d'une année à l'autre. A tous égards, le passage a été utilisé depuis plusieurs années comme un passage public, et la chaussée qui s'étend vers le nord à partir du passage, à travers la propriété de M. St-Amand, a été utilisée comme une chaussée publique. La compagnie était au courant de l'usage public depuis au moins 15 ans de cette chaussée et de ce passage. La compagnie n'a fait aucune objection à cet usage et a toujours entretenu le passage jusqu'au mois de juin 1936. Comme on le remarquera sur le plan qui a été produit, si ce passage est fermé, le requérant se verra refuser l'entrée et la sortie de sa propriété pour se rendre au chemin public. La propriété du requérant est séparée du côté nord par le chemin de fer et du côté sud par la rivière Ottawa, et il n'y a pas d'accès au chemin public soit du côté est, soit du côté ouest. Si elle est privée d'un passage à travers le chemin de fer, sa propriété sera complètement enclose. Il est indispensable au commerce du requérant en rapport avec le moulin à scie et à ses locataires qu'il ait une sortie vers le chemin public du côté nord.

A mon avis, les faits et les circonstances ci-dessus qui se rattachent à la présente requête de même que la disposition spéciale contenue dans l'acte de transport de 1876 déjà citée, distinguent cette cause des causes citées par l'avocat de la compagnie de chemin de fer lors de l'audition. Au sujet de la création d'une servitude ou d'un droit de passage, je référerais aussi aux dispositions du code civil de Québec, articles 499, 500, 545, 556 et 1499.

L'avocat de la compagnie de chemin de fer a déclaré que sa compagnie ne s'opposait pas à l'ouverture d'un chemin public à cet endroit, mais qu'elle soumettait que le coût de l'ouverture d'un chemin serait dans les environs de

$1,200.00 à $1,400.00 et que la compagnie ne consentirait pas à payer aucune partie de ces frais. Le terrain est situé dans la municipalité de Grenville, et le conseil de cette municipalité n'a pas laissé entendre qu'il était prêt soit à autoriser l'ouverture d'un chemin public à cet endroit, soit à contribuer dans une certaine proportion aux frais de telle ouverture.

A la suite de l'audition à Montréal, la Commission donna instructions à un de ses ingénieurs de faire un examen et un rapport concernant ce passage, et dans son rapport l'ingénieur de la Commission a déclaré qu'un passage satisfaisant pourrait être construit pour une somme variant entre $350.00 à $400.00 à un endroit très rapproché de celui où se trouve l'ancien passage. Le requérant a exprimé qu'il était disposé à payer un tiers du coût de construction de ce passage, sa contribution ne devant pas excéder en tout la somme de $133.33. Je crois que la compagnie de chemin de fer devrait payer les deux autres tiers de ce coût. Dans l'acte de transport de 1876 cité ci-dessus, la compagnie de chemin de fer est tenue " d'exécuter envers le vendeur ou ses représentants toutes et chacune des charges, obligations et clauses auxquelles elle est ou sera tenue en vertu des lois générales de ce pays concernant les chemins de fer." L'ingénieur de la Commission a déclaré dans son rapport ce qui suit:

> "Il me semble que dans tous les cas, si le passage est ouvert comme un passage soit privé, soit public, l'amélioration des lignes de vision devrait être effectuée".

et plus loin:

> "Je crois que dans un cas comme dans l'autre, on devrait obliger l'établissement des lignes de vision du côté est, tel que recommandé dans mon rapport."

J'ordonnerais à la compagnie de chemin de fer de rétablir immédiatement les barrières et la chaussée sur la voie ferrée, telles qu'elles existaient avant le 5 juin 1936. Il devrait être ordonné à la compagnie de chemin de fer de reconstruire le passage et d'améliorer les lignes de vision, tel que recommandé dans le rapport de l'ingénieur de la Commission pour, le dit passage, être utilisé à l'avenir comme un passage privé. Les travaux devraient être complétés pas plus tard que le 30 juin 1937. Il devrait être ordonné au requérant de rembourser à la compagnie de chemin de fer un tiers du coût de telles construction et amélioration, la part des frais du requérant ne devant pas toutefois excéder la somme de $133.33.

Ottawa, le 3 février 1937.

Le Commissaire en chef suppléant et le Commissaire Stoneman se sont ralliés au jugement ci-dessus.

ORDER No. 53956

In the matter of the application of Oliver Menard for an Order requiring the reopening of a farm crossing on the line of the Canadian Pacific Railway Company at mileage 65·38 Lachute Subdivision, about one-half mile above Point au Chene Station, in the Province of Quebec.

File No. 39976

Thursday, the 4th Day of February, A.D 1937.

Hon. Hugh Guthrie, K.C., *Chief Commissioner.*
F. N. Garceau, K.C., *Deputy Chief Commissioner.*
J. A. Stoneman, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Montreal, November 12, 1936, in the presence of counsel for the applicant and the railway company, and what was alleged,—

It is ordered:

That the Canadian Pacific Railway Company be, and it is hereby, required forthwith to re-establish the gates and the roadway over its tracks at the point in question as they existed prior to the 5th June, 1936; to rebuild the crossing and improve the sight lines to the east of the crossing so as to give a sight line 300 feet to the east of the railway approach from the edge of the right of way, the crossing to be used in the future as a private crossing.

2. That the applicant reimburse the Canadian Pacific railway company to the extent of one-third of the cost of construction and improvement, not exceeding, however, the sum of $133.33.

3. That the work be completed not later than the 30th day of June, 1937.

H. GUTHRIE,
Chief Commissioner.

Application of Chisholm Saw Mills Company, Limited, and the Edmonton Box and Shook Company, Edmonton, Alberta, for an Order of the Board fixing just and reasonable rates on Lumber and Forest Products from so-called North Central points in Alberta to Toronto and other Eastern Canadian Points.

File No. 26901·62·3

JUDGMENT

McLEAN, *Assistant Chief Commissioner:*

In an application dated August 1, 1936, the Chisholm Saw Mills Company, Limited, and the Edmonton Box and Shook Company, of Edmonton, Alberta, applied to the Board for an order suspending and disallowing the present rates on lumber and forest products from North Central Alberta points to Toronto, Ontario, and other eastern points and fixing new rates that are just and reasonable, the railway companies affected by the application being the Northern Alberta, the Canadian Pacific and the Canadian National Railways.

In said application, it is stated:—

"1. That the applicants' products are sold in Ontario and other eastern points in competition with similar products produced in British Columbia, South Central and North Central groups, and the Manitoba-Saskatchewan group.

"2. The normal rail rate on lumber, the costs per M.F.B.M. to the shipper and the revenue per ton per mile to the carrier, under existing rates, and the distances from the named localities to the said city of Toronto are:—

Group	Rate	Distance Miles	Revenue per Ton Per Mile	Cost, M.F.B.M.
B.C. South Central	81c.	2,235.8	.7245c.	$16.20
B.C. North Central	82½	2,445.63	.6746	16.50
Alta. North Central	81	2,106.8	.7689	16.20
Manitoba-Sask.	60¼	1,591.64	.7578	12.05

"3. The existing rates, applicable to shipments to Ontario from Alberta, North Central points, were established subsequently to those governing similar shipments from points in the Manitoba-Saskatchewan

group; and in establishing such rates consideration was not given to any of the following facts:—

"(*a*) That the groups named in paragraph 1 are the origin of shipments of lumber and forest products to the Ontario and eastern markets, which are highly competitive.

"(*b*) That in the case of the above-named groups, other than the Alberta, North Central, in establishing a schedule of rates the principle of 'the longer the haul, the lower the ton per mile revenue' was observed, while as regards the rates made applicable to the Alberta, North Central, group, this rule was not applied.

"4. The existing rate structure, applicable to shipments of lumber and forest products from Alberta, North Central group, to the said city of Toronto and eastern points, is unjust and unreasonable, creates an undue and unreasonable preference or causes prejudice or disadvantage and unjustly discriminates, as against the applicants, in favour of their said competitors in such markets; and prejudicially affects the applicants' business."

As a matter of accuracy, the statement in paragraph three that the present rates from Alberta North Central points were established subsequent to those now in force from points in the Manitoba-Saskatchewan group should be reversed, that is to say, the present rates from the Manitoba-Saskatchewan group were published subsequent to the present rates from the Alberta points. However, this is not important.

Upon receipt of the application, the interested parties were advised that it would be set down for hearing at sittings of the Board in Edmonton on September 11. At the Edmonton sittings, the railways said they had not had sufficient time to fully prepare their answer to the application and suggested that applicants develop their case, the railways to be given an opportunity to make subsequent answer in writing and applicants to reply thereto in writing. This was agreed upon.

The applicants' final written submission was received by the Board on January 18. All rates named herein are in cents per 100 pounds, unless otherwise specifically indicated.

Counsel for applicants stated that the burden of their complaint is that the difference between the rates from the Manitoba-Saskatchewan and the Alberta groups to Ontario points is such that lumber cannot be profitably shipped from Alberta in competition with that from the Manitoba-Saskatchewan points; that the ton mile revenue figures submitted by them indicate that, except in the case of the Alberta North Central group, the principle of "the longer the haul, the lower the ton per mile revenue" was observed and, if that principle had been applied to their rates, they would have no complaint. It developed that since January 1, 1935, at least, no lumber had been shipped to Eastern Canada from some of the origin points used by applicants, so that they are merely "paper" rates. We have been furnished with the actual points of shipment from January 1, 1935, to July 31, 1936, and, to Toronto from the different territories, this information shows:—

From	Average Distance	Average Rate	Average Ton Mile Revenue	Cost M.F.B.M.[1]
Manitoba-Saskatchewan	1,562	59½c.	.766c.	$11.90
Alberta	2,110	80½	.764	16.10
Interior British-Columbia	2,376	81½	.687	16.30

[1] Based on 2,000 pounds M.F.B.M.

The railways state the existing rates from all points in Ontario (west of Armstrong and Fort William), Manitoba and Saskatchewan were arrived at by taking 65 per cent of the actual 10th class terminal rate from each station to Fort

William, to which was added a uniform arbitrary, to Toronto, for instance, of 26½ cents; that the rates from the various group origin territories in the interior of British Columbia and Alberta have always been related to the normal rates from the so-called Pacific Coast group and based on differentials thereunder. They point out that, in the fixing of rates on forest products and various other commodities between points in Western and Eastern Canada, many factors are taken into consideration and distances are not controlling. With respect to forest products from British Columbia and Alberta points, the rates have, for a good many years, been group rates, that is to say a common rate applies from all the stations in a group comprising a large number of points with considerable variation, or differences, in mileage.

The railways also point out that it is a well-established practice to construct rates between points in Eastern Canada and stations in Western Canada by adding to the rates to the lake head, a uniform arbitrary for the haul east of the lake head, which is the same figure regardless of the location of the point of origin, or destination, in Western Canada, and the distance involved in the haul west of the lake head. They assert, therefore, that, if ton-mile revenue is to be taken as the measure for rates on eastbound lumber from the actual shipping points, or group of shipping points, the ton-mile revenue for the western factor should be taken into consideration instead of the ton-mile revenue for the through distance; that, if this were done, from Chisholm, which is the shipping point of applicants, the ton-mile earnings are lower than from any of the points in Manitoba and Saskatchewan from which there has been a movement of lumber. The applicants take issue with this yardstick of measurement and deal with it at some length. It is here referred to only because of the submissions made thereon, but as I am not giving any consideration to this feature, for the reason that I do not consider in this case it is important or relevant, it is unnecessary to pursue or discuss it further herein.

Turning now to such information as is before us concerning the movement of lumber from Alberta, Saskatchewan, and Manitoba points to Eastern Canada. Applicants, who ship from Chisholm, state their shipments to Ontario have been confined to what is called No. 3 Common Spruce Lumber, Wholly Air-dried; that it is not profitable to ship any other grade of lumber to that market. There is nothing to show what kinds of lumber the shipments that were made from other Alberta shipping points consisted of. From the mills in Saskatchewan and Manitoba, at a much shorter distance from the Ontario market and with a lower rate, it may be that they ship several grades of lumber, but we do not know. In the absence of these data, the figures as to volume of tonnage from these two areas are of no help as showing comparative quantities, or competition, with respect to No. 3 Common Spruce Lumber shipped therefrom. Being nearer and with lower rates, the Saskatchewan-Manitoba mills should, naturally, be in a better position to enter the Ontario market than the Alberta mills. It is shown that, in 1935, the Saskatchewan-Manitoba mills shipped 113 carloads of lumber to Ontario; that the Alberta mills shipped 71 cars; that, from January 1 to July 31, 1936, the Saskatchewan-Manitoba mills shipped 98 cars and the Alberta mills 28 cars. The Alberta mills also shipped 27 cars of box shooks in 1935 and 13 cars from January 1 to July 31, 1936, whereas there were no shipments of box shooks from the Saskatchewan-Manitoba mills in either year. How applicants could ship box shooks to Eastern Canada in competition with the box shook manufacturers throughout that area, and which, apparently, the Saskatchewan-Manitoba mills cannot do, was not explained. In entering the Eastern Canadian market, the shippers of spruce lumber in Alberta, Saskatchewan, and Manitoba are, naturally, in very active competition with, and entering, the natural market of the mills in Ontario and Quebec with short hauls and very much lower freight rates. It is not the Board's function, nor has it been empowered, to attempt to overcome geographical advantages or disadvan-

tages of location by directions as to freight rate adjustments. Upon reference to data compiled by the Dominion Bureau of Statistics, covering interprovincial distribution of softwood lumber, it is found that, for the years 1928, 1930, 1932, and 1934 (biennial reports only being issued) there was the following distribution into the province of Ontario:—

From	M.F.B.M.
Ontario	1,129,097
Quebec	249,564
Manitoba	15,490
Saskatchewan	1,270
Alberta	10,587

For the same years, there was the following distribution into the province of Alberta:—

From	M.F.B.M.
Alberta	293,166
Saskatchewan	38
Manitoba	56
Ontario	695*

* During the year 1932.

Figures showing shipments from British Columbia are omitted because the burden of the complaint is with respect to the rates from the Manitoba-Saskatchewan points.

Adverting, again, to the question of rates, the situation is, and has been for a good many years, that, with respect to lumber from points in British Columbia and the western portion of Alberta, a common rate applies to a given destination from all origin points within a fairly large zone. This is the outcome of conferences and agreement between representatives of the shippers and the railways and the object was to preserve a fair rate relationship amongst the different mills. These rates are not, therefore, built up on mileage, but, on the other hand, by a grouping arrangement. The Board has many times indicated that where rates are based on a grouping system, mileage cannot be recognized as controlling and, as a corrollary, ton-mile revenue comparisons, based on mileage, are not in any way conclusive. The applicants' whole case is built up on ton-mile revenue comparisons. In Volume 12, Board's Judgments and Orders, page 268, complaint of Spanish River Pulp and Paper Mills, Limited, at page 282, the Board stated:—

> "As already set out, the Board has indicated that mileage is not the only and necessarily conclusive factor. The significance of this in connection with grouping in rate structures is important. Distance cannot be recognized as controlling. If it were, there could be no group rates. McCloud River Lumber Company v. S.P. Co., 24 I.C.C., 89. Where rates are blanketed, mileage is not a controlling factor. Memphis Freight Bureau v. I.C.R.R. Co., 27 I.C.C., 507. The maintenance of a group rate requires more or less disregard of distance, and this sometimes results in varying degrees of inequality. Waukeska Lime and Stone Co. v. C.M. & St. P. Ry. Co., 26 I.C.C., 515."

The existing situation is more clearly brought out by considering the rate and ton-mile rate to Toronto from the points that are grouped at an 81 cent rate, which includes the applicants' shipping point, Chisholm, and the ton-mile spreads resulting from different mileages included in the group are specially noteworthy:—

To Toronto			Cents per Ton
From	Miles	Rate	per Mile
Shelley	2,477	81	.654
Galloway	2,147	81	.754
Crow's Nest	2,089	81	.776
Nakusp	2,391	81	.677
Blairmore	2,076	81	.780
Chisholm	2,112	81	.767

It will be observed that the ton-mile rates for high and low mileages in this group vary from ·654 to ·780 cents. The ton-mile rate from Blairmore, 2,076 miles, is ·780 cents, which may be compared with the following ton-mile rates from considerably shorter distances in Saskatchewan and Manitoba, namely:—

From	Miles	Rate	Cents per Ton per Mile
Bowsman, Man.	1,495	57	.763
Mafeking, Man.	1,528	59	.772
National Mills, Man.	1,552	59	.760
The Pas, Man.	1,674	63	.753
Arran, Sask.	1,510	57	.755
Crooked River, Sask.	1,632	63	.772
Hudson Bay Jct., Sask.	1,586	61½	.776
Sturgis, Sask.	1,531	59½	.777
Usherville, Sask.	1,554	59½	.766

This does not indicate that the principle of "the longer the haul the lower the ton per mile revenue" was observed. All the ton-mile rates from the Saskatchewan-Manitoba points above mentioned are lower than from Blairmore, a much longer haul, and all but two of them are lower than from Crowsnest, also a much longer haul. This detail is pertinent as showing that mere ton-mile comparisons involving not a mileage, but a group mileage, basis, are not in any way conclusive and are by no means clearly illustrative.

Upon carefully considering this matter, however, I am of the opinion that the 81 cent group, which embraces a large zone, could, with fairness, be separated and many of the Alberta stations included therein formed into a separate group at a rate of 78 cents. I would, therefore, direct:—

That the maximum rate be 78 cents to stations in Eastern Canada taking Rate Bases 1 and 3 to 13, inclusive, in Agent Thompson's Tariff C.R.C. No. 14, from points on the Canadian Pacific Railway, Blairmore and east on the Crowsnest line and Lake Louise and east on the main line; from points on the Canadian National Railways, Galloway and east on the main line; from all other points in Alberta on the Canadian Pacific and Canadian National Railways; from Spurfield and points intermediate thereto on that portion of the Northern Alberta Railways formerly the E.D. & B.C. Railway.

That, to stations in Eastern Canada taking Rate Basis 2 in Agent Thompson's Tariff C.R.C. No. 14, the rates shall not exceed the 78 cent rate by more than the present spreads over the 81 cent rate.

That rates in accordance with this direction be made effective within ten days of receipt by the railways of the order issued pursuant hereto.

Ottawa, Ont., February 16, 1937.

The Deputy Chief Commissioner and Commissioner Stoneman concurred.

ORDER No. 54000

In the matter of the application of the Chisholm Saw Mills Company, Limited, and the Edmonton Box and Shook Company, of Edmonton, Alberta, for an Order fixing just and reasonable rates on lumber and forest products from so-called North Central points in Alberta to Toronto and other Eastern Canadian points.

File No. 26901.62.3.

Tuesday, the 16th day of February, A.D. 1937.

Hon. Hugh Guthrie, K.C., *Chief Commissioner.*
S. J. McLean, *Asst. Chief Commissioner.*
F. N. Garceau, K.C., *Deputy Chief Commissioner.*
J. A. Stoneman, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Edmonton, September 11, 1936, in the presence of counsel for the applicants and the Cana-

dian Pacific and Canadian National Railway Companies, and what was alleged; and upon reading the further written submissions filed—

It is ordered:

1. That the maximum carload rate on lumber and forest products be 78 cents to stations in Eastern Canada taking Rate Bases 1 and 3 to 13, inclusive, in Agent Thompson's Tariff C.R.C. No. 14, from points on the Canadian Pacific Railway, Blairmore and east on the Crow's Nest Line and Lake Louise and east on the main line; from points on the Canadian National Railways, Galloway and east on the main line; from all other points in Alberta on the Canadian Pacific and Canadian National Railways; from Spurfield and points intermediate thereto on that portion of the Northern Alberta Railways formerly the Edmonton, Dunvegan and British Columbia Railway.

2. That, to stations in Eastern Canada taking Rate Basis 2 in Agent Thompson's Tariff C.R.C. No. 14, the rates shall not exceed the 78-cent rate by more than the present spreads over the 81-cent rate.

3. That rates in accordance herewith be made effective within ten days of receipt of this Order by the railway companies.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53959

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

MONDAY, the 8th day of February, A.D. 1937.

File No. 34822·2

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

It is ordered: That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement	32	to	Tariff	C.R.C.	No.	E-1689
"	21	"	"	"	"	E-1745
"	37	"	"	"	"	E-1911
"	38	"	"	"	"	E-1911
"	5	"	"	"	"	E-2448

Tariff C.R.C. No. E-2526.
Tariff C.R.C. No. E-2530.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53963

In the matter of absorption of switching charges at Cornwall, Ontario, on non-competitive carload traffic between local stations on the Canadian Pacific Railway and Beach Furniture, Limited, involving interswitching movements by the Cornwall Street Railway, Light and Power Company, Limited, as intermediate carrier, and the Canadian National Railways as terminal carrier, Beach Furniture, Limited, being served by private siding on the Canadian National Railways.

File No. 6713·242

MONDAY, the 8th day of February, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading the submissions filed by Beach Furniture, Limited, and the Canadian Pacific and Canadian National Railways,—

The Board doth order and declare:

That, with respect to traffic as above described herein, the provisions of General Order No. 252, dated October 26, 1918, are applicable and require the Canadian Pacific Railway Company, as the line carrier, to absorb not less than:—

(a) One-half of the tolls charged by the terminal carrier under Section 5, as qualified by Section 9, of said General Order No. 252;

(*b*) One dollar and fifty cents per car, irrespective of weight, in respect of the tolls charged by the intermediate carrier.

Provided, that the line carrier may, unless its tariff rate is lower, charge and collect twelve dollars per car for its haul between the interchange and the point of shipment, or destination, when, by reason of such absorption, its line charges would otherwise be less than that amount.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53964

In the matter of the application of the Express Traffic Association of Canada, under Sections 322 and 360 of the Railway Act, for approval of proposed Supplement "H" to Express Classification for Canada No. 8, on file with the Board under file No. 4397·120.

TUESDAY, the 9th day of February, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

Whereas notice has been given by the Express Traffic Association of Canada in the *Canada Gazette*, and copies of the said supplement furnished to the parties named in the General Orders of the Board Nos. 271, 348, 353, 469, and 471, with the request that their objections, if any, be filed with the Board within thirty days, no one offering any objection; and upon the recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said proposed Supplement " H " to Express Classification for Canada No. 8, on file with the Board under file No. 4397·120, be, and it is hereby, approved; the said supplement to be published as Supplement No. 8 to Express Classification for Canada No. 8, and subject to the wording of paragraph 4 of Item X-A therein being changed to read as follows:—

> "Orders to call for shipments at another office without instructions to accept money in lieu of goods will receive attention when mailed direct to the agent at such other office, and no charge will be made for making the call where such goods are ready for shipment and no extra service is required of the Express Company. If sender of such order requires a report when, for any reason, the shipment is not obtained, such report will be made giving full information, and will be waybilled with charges of 15 cents to collect. When extra services are required, an extra charge will be assessed in accordance with paragraph (1) of this rule."

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53971

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822·2

WEDNESDAY, the 10th day of February, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in item 265D of Supplement No. 62 to Tariff C.R.C. No. E-1244, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3; the Temiscouata Railway Company's proportion to be reported as shown below.

2. And the Board hereby certifies that the Temiscouata Railway Company's proportion of the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item 265D of Supplement No. 62 to Tariff C.R.C. No. E-1244, approved herein, is as follows:—

From	Cents per 100 pounds Tariff	Normal
Cabano, Que	6	7½

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53973

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822·8

THURSDAY, the 11th day of February, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item No. 1 of Tariff C.R.C. No. 56, filed by the Sydney and Louisburg Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item No. 1 of Tariff C.R.C. No. 56, approved herein, is 12½ cents per 100 pounds.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53976

In the matter of the application of the New York Central System, hereinafter called the "Applicant," for permission to issue a supplement to its tariff C.R.C. No. 3136, on less than statutory notice, to correct a clerical error.

File No. 27612·149

FRIDAY, the 12th day of February, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

Upon its appearing that, through a clerical error, incorrect class rates were published between stations on the Long Island Railroad taking Rate Group Letter "D" and stations on the New York Central Railroad taking Rate Group Number 42, in Supplement No. 23 to the applicant's Tariff C.R.C. No. 3136,—

It is ordered: That the applicant be, and it is hereby, granted leave to issue and file, on three days' notice, a supplement to said Tariff C.R.C. No. 3136, correcting clerical errors as published in Supplement No. 23 to the said Tariff.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53979

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822·12

FRIDAY, the 12th day of February, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in items specified below of Tariff C.R.C. No. E-4797, filed by the Canadian Pacific Railway Company under section 9 of the

Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said items specified below of Tariff C.R.C. No. E-4797, approved herein, are as follows:—

Item		All cents per 100 pounds	
85		18	
100		20	
145		22½	
		C.L.	Any quantity
150	To Saint John, N.B.	16½	22½
	W. Saint John, N.B.	14	14
425		12½	
550		4½	
645		15	20
675		15	
690		18	
1790		4½	
		Local	Furtherance
2115		6½	6

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53980

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822·12

FRIDAY, the 12th day of February, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item No. 428 of Supplement No. 3 to Tariff C.R.C. No. E-4797, filed by the Canadian Pacific Railway Company under Section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll, for the purpose of reimbursement under subsection 3 of Section 9 of the said Act, on traffic carried under the said item No. 428 of Supplement No. 3 to Tariff C.R.C. No. E-4797, approved herein, is—

Cents per 100 pounds	
Local	Furtherance
6½	6

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53981

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act. File No. 34822·12

FRIDAY, the 12th day of February, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in items 2087 and 2737 of Supplement No. 6 to Tariff C.R.C. No. E-4797, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said items 2087 and 2737 of Supplement No. 6 to Tariff C.R.C. No. E-4797, approved herein, are as follows:—

Item	Cents per 100 pounds
2087	4
2737	14½

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53990

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act. File No. 34822.2

MONDAY, the 15th day of February, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in item No. 265D of Supplement No. 62 to Tariff C.R.C. No. E-1244, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3; the Canada and Gulf Terminal Railway Company's proportions to be reported as shown below.

2. And the Board hereby certifies that the Canada and Gulf Terminal Railway Company's proportions of the normal tolls, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item No. 265D of Supplement No. 62 to Tariff C.R.C. No. E-1244, approved herein, are as follows:—

From	Cents per 100 pounds Tariff	Normal
Baie des Sables, Que.	2½	3
Crawford, Que.		
Mallory, Que.		
Metis Beach, Que.		
Plourde, Que.		
Priceville, Que.		
Lepage, Que.	4½	5½
Tartigou, Que.		
River Blanche, Que.		
St. Leandre, Que.		
Matane, Que.		
Hammermill, Que.		

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53991

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

SATURDAY, the 13th day of February, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in items specified herein of Tariff C.R.C. No. E-1504, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Temiscouata Railway Company's proportions to be reported as shown below.

2. And the Board hereby certifies that the Temiscouata Railway Company's proportions of the normal tolls, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. E-1504, approved herein, are as follows:—

Item	Cents per 100 pounds Tariff	Normal
60	8.7	10.9
62	8.7	10.9
64	8.7	10.9
130	9.8	12.3
135	9.8	12.3

H. GUTHRIE,
Chief Commissioner.

ORDER No. 53992

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

SATURDAY, the 13th day of February, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in items specified herein of Supplement No. 37 to Tariff C.R.C. No. E-1504, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Temiscouata Railway Company's proportions to be reported as shown below.

2. And the Board hereby certifies that the Temiscouata Railway Company's proportions of the normal tolls, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 37 to Tariff C.R.C. No. E-1504, approved herein, are as follows:—

Item	Cents per 100 pounds Tariff	Normal
66A	8.7	10.9
68E	8.7	10.9
74E	8.3	10.4
76C	8.3	10.4
78C	8.3	10.4
80F	8.3	10.4
82H	8.3	10.4

H. GUTHRIE,
Chief Commissioner.

160

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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In the matter of the reconsideration of the question of the diversion of Cummane Street, being the first crossing east of Truro Station, N.S., Mileage 0·2 Mulgrave Subdivision, Canadian National Railways.

File No. 27218.100

GUTHRIE, CHIEF COMMISSIONER:

This is an application by the Canadian National Railways for the diversion of Cummane street, in the town of Truro, province of Nova Scotia. Cummane street lies about a quarter of a mile east of the station and is crossed by five tracks of the railway. The Cummane street crossing is unprotected. To the east of Cummane street at a distance of about 250 feet, Cottage street is also crossed by the railway by four tracks. The Cottage street crossing is protected on both sides by gates. Prince street is one of the main traffic streets in Truro, and a good deal of traffic passes down Prince street in a southeasterly direction and crosses the railway tracks either at Cummane street or at Cottage street, but the heaviest traffic would naturally pass over Cottage street. When drivers of vehicles and pedestrians are proceeding southeasterly along Prince street and find the gates at the crossing at Cottage street closed, they very frequently turn into Cummane street and cross five railway tracks at this point.

The present application is for the diversion of Cummane street, so that the traffic which now passes along Cummane street may be diverted southeasterly along Prince street and thence along Cottage street to a point where Centre street joins Cottage street on the easterly side. Centre street does not extend westerly beyond Cottage street, but about 200 feet farther south Brunswick street, running both east and west, crosses Cottage street and would afford accommodation to the public which now uses Cummane street. If the traffic on Cummane street were diverted down Cottage street to Brunswick street, it would compel traffic which was destined for the southwesterly part of Truro to travel about 800 or 1,000 feet more than over Cummane street as at present. However, the applicant company has offered an alternattive proposal by which a new street might be opened from Cottage street, at the point where Centre street joints Cottage street, and running westerly across Leper Brook to a street now known as Railway street, which is upon the property at present owned by the

applicant company. The alternative plan would involve the acquisition of land for a street from Cottage street westerly to the present boundary of Cummane street, and the acquisition of Railway street by the municipality, and would also involve the construction of a bridge over a stream known as Leper Brook. There is already a bridge over this stream where it is crossed by Brunswick street.

The application was heard at Truro on November 25, 1936, in the presence of counsel for the applicant company and for the municipality of Truro. The municipality opposes the application upon the ground that the present crossings of the railway upon Cummane street are not exceptionally dangerous to the public, that in recent years only one accident has happened at this crossing, and that Cummane street is an important highway which accommodates a substantial amount of the traffic which comes down Prince street and is destined for the northwesterly part of Truro. The municipality alleges that great inconvenience would result in the diversion of the traffic from Cummane street over Prince and Cottage streets to Brunswick street, and the municipality does not favour the opening of a new street from Cottage street to Railway street, which would involve the construction of a bridge over Leper Brook. The mayor stated that the municipality objected to the construction of another bridge over Leper Brook on account of the difficulty with ice-jams in the early spring. It seems that there has been a good deal of difficulty in the past with ice-jams at the Brunswick street bridge, and the mayor claims that another bridge over Leper Brook would cause further difficulty and expense to the municipality.

The Board made a personal inspection of the Cummane street crossings and the members of the Board were impressed with the necessity of providing some protection at this crossing to remedy the dangerous situation which now exists. Cummane street crossing might be protected by the erection of gates on either side, which could be operated from the tower which now exists and from which the gates at Cottage street are at present operated, or protection might be afforded by the erection of double bells and wigwags. The applicant company undertook to make an estimate of the expense consequent upon each of these different methods of protection and to submit the figures to the municipality, in order that the municipal council might go further into the matter, particularly in regard to the question of expense. This estimate was subsequently made by the railway company and was submitted to the municipality. It shows that the cost of construction of two automatic wigwags with bells would be $1,750, and that the annual maintenance of same would be $150. The cost of installing electrically operated crossing gates to be operated from the present gate-tower would be $3,875, and the estimated annual maintenance would be $300. The town council, however, would not agree to pay any proportion of the cost of the installation and maintenance either of wigwags or gates at the crossing in question.

It was stated upon the hearing that the cost of the diversion of the highway and of the construction of a bridge over Leper Brook would be in the neighbourhood of $12,000, but, in the opinion of the engineer of the Board who looked over the locus, this estimate might be substantially reduced. The Board's engineer estimates that $6,000 would cover the expenditure in connection with the erection of a new bridge and the opening of a new street. The Board's engineer is also of opinion that if the span of the proposed bridge structure were made wide enough, no difficulty would be experienced in regard to ice-jams through the construction of another bridge.

In my view of the matter the best solution of the present difficulty would be the diversion of Cummane street as above poined out. I do not think that any serious inconvenience would be caused to the travelling public if traffic destined for the southwesterly section of Truro were diverted along Prince street and Cottage street to Brunswick street. The extra distance to be travelled would not be more than 800 to 1,000 feet at most. This would avoid the

opening of a new street and the construction of a bridge over Leper Brook. On the other hand, if the municipality deems it desirable that a new street be opened from Cottage street to Railway street, which would involve the construction of a bridge, I think the applicant company should bear a fair proportion of the expense of this work. If this scheme were adopted, it would result in the elimination of a dangerous grade crossing, and a contribution of 70 per cent of the cost of the work might be paid out of the special parliamentary vote for railway grade crossings. Assuming that the cost of opening a new street and erecting a new bridge would be $6,000, as estimated by the Board's engineer, I think that 70 per cent of this cost might be contributed from the special parliamentary vote and that the applicant company be required to bear 30 per cent of this cost. The applicant company should also grant Railway street to the municipality for use as a public highway. The future maintenance of both highway and bridge should be placed upon the town of Truro, together with property damage, if any. I would allow the municipality one month during which to elect whether it desires the opening of the new street and the construction of the bridge upon the above terms or whether it prefers the diversion of traffic via Prince, Cottage, and Brunswick streets. Should the municipality neglect or decline to elect within the time limited, I think an order should be made for the diversion of Cummane street by the opening of a new street and the construction of a bridge upon the terms above set out.

I may say that, personally, I was impressed with the dangerous condition existing at the Cummane street crossing. This crossing lies in the midst of the busy yard of the applicant company at Truro, and train movements are very frequent at this point. As the distance between the Cummane street crossing and the Cottage street crossing is only about 250 feet, the inclination of drivers of motor cars upon seeing the gates closed at Cottage street is to turn into Cummane street, where there is no protection, without regard to the fact that the gates at Cottage street clearly indicate that a train may be expected within a very few moments. In my opinion, the diversion of Cummane street should be ordered either via Prince, Cottage, and Brunswick streets or via Prince, Cottage, and a new street to connect with Railway street, as above mentioned.

Ottawa, December 21, 1936.

The Deputy Chief Commissioner and Commissioner Stone concurred.

A tentative judgment was pronounced in this case on December 21, 1936. It was submitted to the Municipal Corporation of the Town of Truro in order that that municipality might elect whether it favoured the opening of a new street and the construction of the bridge mentioned in the said judgment or whether it preferred the diversion of traffic via Prince, Cottage, and Brunswick streets. By letter dated January 15, 1937, the town clerk and treasurer of the Town of Truro forwarded to the Board a copy of a resolution passed by the town council on the last-mentioned date, in the words following:—

> "That the council is of the opinion that it is not advisable to expend money in the opening of a new street and the building of a new bridge in view of the fact that Brunswick street is so near, but the council is of the opinion that a grant of $5,000 should be made to the town of Truro to enable them to improve, widen, and pave the streets over which the traffic will be diverted by the closing of Cummane street."

There is no doubt that the closing of Cummane street and the elimination of the railway crossing now existing thereon will divert the traffic which now passes along Cummane street to Prince, Cottage, and Brunswick streets, and it will become necessary to improve and enlarge these streets, or some of them, to accommodate the additional traffic caused by reason of the closing of Cummane street. It has been estimated that an expenditure of $5,000 will be necessary for this purpose and, in my opinion, a reasonable contribution might be made for this purpose from the special parliamentary vote, No. 420, as the proposed diversion will entirely eliminate the very dangerous crossing which now exists on Cummane street.

I would recommend that there be contributed from the above parliamentary vote towards this project one-half the actual cost of the said work; and that the applicant railway company pay the remaining one-half thereof. That the above contributions to the cost of this work shall not in any case exceed the sum of $2,500 from the said parliamentary vote and $2,500 from the said railway company. That the town of Truro assume all liability in respect of any property damage which may result from the said diversion and the closing of the said crossing.

The above work should be executed by the town of Truro, subject to the approval of the Board; and that the cost of the said work be certified to the Board in the usual manner. The said railway company shall, in addition to the contribution above mentioned, at its own cost, perform all work necessary to close the said crossing on Cummane street.

Ottawa, February 8, 1937.

The Deputy Chief Commissioner and Commissioner Stone concurred.

ORDER No. 54046

In the matter of the reconsideration of the question of the crossing of the tracks of the Canadian National Railways at grade level on Cummane Street; the closing of the said street; and the diversion of the traffic along Prince Street, in the Town of Truro, Province of Nova Scotia, as shown on the plan dated November 25, 1936, on file with the Board under file No. 27218.100.

Tuesday, the 9th day of March, A.D. 1937.

Hon. Hugh Guthrie, K.C., *Chief Commissioner.*
F. N. Garceau, K.C., *Deputy Chief Commissioner.*
G. A. Stone, *Commissioner.*

Upon hearing the matter at the sittings of the Board held at Truro, November 25, 1936, in the presence of counsel for the railway company and the town of Truro, and what was alleged; and upon an inspection by the Board of the *locus in quo*, and the consent of the town of Truro to the closing of Cummane street, filed,—

It is ordered:

1. That Cummane street, in the town of Truro, province of Nova Scotia, be closed and the traffic which now passes along Cummane street be diverted southeasterly along Prince street and thence along Cottage street to Brunswick street, as shown on the said plan on file with the Board under file No. 27218.100; the work to be done by the town of Truro, subject to the approval of the Board.

2. That, with the approval of the Governor in Council by Order in Council P.C. 436, dated March 5, 1937, fifty per cent of the cost of the said work, not exceeding, however, the sum of $2,500, be paid out of the fund appropriated for the purpose under Department of Railways and Canals Vote No. 420, Special Supplementary Estimates 1936-37, and that the remainder of such cost, but not to exceed the sum of $2,500, be borne and paid by the Canadian National Railways; any amount in excess of the said sum of $2,500 to be paid by the town of Truro; and that the cost of the said work be certified to the Board.

3. That the Canadian National Railways, in addition to the contribution above provided for, at its own expense, perform all work necessary to close the crossing of their tracks on Cummane street.

4. That the town of Truro assume all liability in respect of any property damage which may result from the said diversion and the closing of the said crossing.

5. That the approval of the Governor in Council by the said Order in Council herein referred to is subject to the proviso that the town of Truro shall agree with His Majesty, represented by the Minister of Transport, in such form as the said minister may approve, that all persons employed in the execution of the works herein authorized shall, while so employed during the continuance of the execution of the works, be paid fair wages and that the working hours of such persons shall not exceed eight hours per day nor forty-four hours per week while so employed, all in accordance with the provisions of the Fair Wages and Hours of Labour Act, 1935.

H. GUTHRIE,
Chief Commissioner.

Application of J. Maurice Chouinard, Tourville, Que., for an Order directing a reduction in Freight Rates on Mill Refuse and Lumber, in carloads, from Ste. Apolline and other points on the Armagh Subdivision of the Canadian National Railways to Quebec and Montreal.

File No. 26901.49.3.

GUTHRIE, CHIEF COMMISSIONER:

JUDGMENT

This application was heard at Quebec on January 11, 1937, in the presence of the applicant and representatives of the Canadian National Railways. It concerns the rates on mill refuse and lumber, in carloads, from Ste. Apolline to Quebec and Montreal, and that any revision directed therein also include other shipping points on the Armagh Subdivision of the Canadian National Railways. Freight rates named herein are in cents per 100 pounds, except where otherwise specified.

MILL REFUSE

The complaint with respect to the rates on mill refuse, briefly stated, is that from Ste. Apolline to Quebec the transportation cost equals 80 to 90 per cent of its value when loaded at shipping point; that, when shipped to Montreal, it is greatly in excess thereof. A reduction of 25 per cent in the present rates is applied for. The present rates are, from Ste. Apolline to Quebec, 96 miles, 5 cents, and to Montreal, 234 miles, 9 cents. The present rate to Quebec produces an earning of 1·0416 cents per ton per mile and, to Montreal, 0·7692 cents per ton per mile. These are low earnings for the distance hauled.

On this question of the relation of the transportation cost to the value of the commodity, it may be stated that it is not within the province of railways to dictate where manufacturing shall, or shall not, be done, or, by means of rate adjustments or otherwise, to select or control the markets where their shippers shall buy or sell. Every shipper is entitled to a reasonable rate; but, if the nature or value of a commodity offered for transportation is such as to demand an unreasonably low rate, there is no legal obligation upon the carrier to meet this demand. Mill refuse, as its name implies, is a very low-grade commodity, the transportation of which for long distances may not always be logical or practicable, and, in so far as concerns the administration of the law, the carrier has discharged its duty in this respect when it has accorded reasonable and non-discriminatory rates.

Cases where the transportation cost approximates, or exceeds, the value of the commodity at point of shipment are not unusual. This situation exists with respect to many low-valued commodities where hauled for considerable distances. Two or three cases out of many may be cited:—

Volume 15, Board's Judgments, Orders and Rulings, page 15, complaint of the Eustis Mining Company, Eustis, Que. The freight rate from Eustis to Hamilton, following the Board's direction therein, was equal to the value of the commodity f.o.b. mine.

In Volume 22, Board's Judgments, Orders and Rulings, page 163, application of Canadian Sugar Factories, Limited, Raymond, Alberta, the rates on wet sugar beet pulp, which the Board found reasonable, were approximately double the value of the commodity at point of shipment.

In Volume 23, Board's Judgments, Orders and Rulings, page 281, complaint of the Canada Wood Products Company, St. Thomas, Ontario, in *re* freight rates on lumber, consisting of short boards or "trimmer ends," the transportation cost was in excess of the value f.o.b. mill at point of origin.

Attention may be directed to the special consideration extended with regard to the rates on cordwood, slabs and mill refuse in connection with the various rate increases and decreases since the year 1916. In 1918, when, under Order in Council P.C. 1863, dated July 27, 1918, rates generally were increased 25 per cent, an increase of only 1 cent per 100 pounds was permitted on cordwood, slabs and mill refuse for fuel purposes. By General Order No. 308, dated September 9, 1920, in the matter of 40 per cent increase in Canadian freight rates, the increase in the rates on these commodities, for use exclusively as fuel, was limited to 10 per cent. Then, by General Order No. 351, dated November 26, 1921, the Board directed "that the rates on cordwood, slabs, edgings and mill refuse, for fuel purposes, be restored to the basis in effect prior to September 13, 1920."

There are shown below the rates on mill refuse for the movement from Ste. Apolline of 96 miles to Quebec and 234 miles to Montreal, as compared with the present normal rates (as distinguished from rates which may be classed as competitive) on other low-grade commodities for hauls of the same distance in Eastern Canada outside of the territory covered by the provisions of the Maritime Freight Rates Act:—

	96 Miles	234 Miles
Mill refuse from Ste. Apolline, present rate	5 cents	9 cents
Mill refuse from Ste. Apolline, rate applied for	3¾	6¾
Mill refuse in Eastern Canada west of Diamond Junction	6	9½
Coal cinders, common clay, furnace slag, gypsum rock and field stone	11½	16½
Gravel, building sand, crushed stone	8¼	11¼
Moulding sand, silica sand, silica gravel	12	16½
Asbestos sand and gravel and rubble stone	10½	14
Stone dust and slate dust, or ground	9½	11
Road building material, consisting of stone (crushed, broken or ground), stone screenings, chert, gravel, sand and/or slag, mixed or coated with asphalt, oil, tar and/or lime	9¼	12¼

There is no shipping point of the same or greater distance from Quebec or Montreal that has any lower rate than published from Ste Apolline. Many points of the same distance are actually shipping this mill refuse to Quebec and Montreal on higher rates, because they are outside of the select territory as described in the Maritime Freight Rates Act, while Ste. Apolline is within such select territory and rates therefrom are, consequently, slightly lower than applicable for hauls entirely west of Diamond Junction, as shown in the tabulation above set out.

Exhibit No. 5 shows that, during the period from December 1, 1932, to March 31, 1933, the Canadian National Railways carried 293 carloads of slabs, etc., from various stations into Montreal and 108 of these cars paid rates in excess of the 9-cent rate from Ste. Apolline, namely: —

Number of Cars	Rate Paid
2	9½ cents
32	10
4	10½
4	11
49	11½
13	12
4	12½

This indicates that the competitors of the applicant are shipping to Montreal and at higher rates than paid by him. In Exhibit No. 8, it is shown that between November 1, 1934, and April 30, 1935, the Canadian National Railways hauled 47 cars of slabs and mill refuse into Quebec; that, in no case, was the rate paid less than 5 cents (the Ste. Apolline rate) and that a number of the cars paid rates of 5½, 6, 6½, 8½ and 9 cents. The same exhibit shows that, between November 1, 1935, and April 30, 1936, there was a movement of 66 cars of slabs into Quebec; that again, in no case, was the rate paid less than 5 cents and that rates as high as 9 cents were paid. Exhibit No. 9, covering 163 cars during a later period, shows the same condition.

The rates on mill refuse are on a very low basis; there has been no complaint concerning them from other shippers; what was submitted by the applicant does not justify the Board in directing a decrease in these rates, which, of course, would require to be general in its application, because the applicant's rates could not be dealt with apart and isolated from the general level of these rates in Eastern Canada.

LUMBER

The gravamen of the complaint with regard to the rates on lumber is that from St. Jean Port Joli, Ste. Anne, St. Pacome and Isle Verte, along the St. Lawrence river, the railway publishes, during the season of navigation, namely, April 15 to November 30, competitive rates to meet water competition, while, from Ste. Apolline, etc., on another branch of the railway some distance from the river and not subject to the same competitive conditions, reduced rates are not published. Applicant desires the same rate treatment as accorded to the competitive points mentioned. To Quebec, the rate from Ste. Apolline is 12 cents, while the summer competitive rate from the other points mentioned is 9 cents. To Montreal, the rates are 17 and 12 cents respectively.

The competition at the St. Lawrence river points is with schooners going to Quebec and Montreal for eastbound cargoes and they are prepared, on the westbound movement, to take any traffic offering at low rates. It is stated that the shippers are prepared to pay a somewhat higher rail rate than offered by the schooners, because of certain advantages in rail transportation and the competitive rates which they establish enable the railway to retain some of the business. The schooner rate from the points in question to Montreal is stated to be $2 per 1000 feet and, to Quebec, $1 per 1000 feet, added to which is trucking and loading cost of $1.

Applicant states that, with respect to lumber shipped to Montreal, he is at a disadvantage of $1.50 per 1,000 feet as compared with his competitors at

the water-competitive points herein named, that being the rate difference. If applicant were competing with a lumber shipper located at a much shorter distance from Montreal, resulting in the same rate difference due to the difference in mileage, he could not, of course, properly demand the same rate as accorded to the shipper with the shorter mileage, because, obviously, the distance hauled governs the rate charged and it has always been held that the Board has no power to direct rate adjustments in an attempt to equalize geographical advantages or disadvantages in location.

Sections 314, 329 and 332 of the Railway Act contain express provisions enabling a railway to establish competitive rates. Section 314 provides that there should be equality of tolls where traffic is carried under "Substantially similar circumstances and conditions." Section 316 prohibits a railway from giving any undue, or unreasonable, preference or advantage, or subjecting any traffic to any undue, or unreasonable, prejudice or disadvantage. In section 317 it is provided that the Board may determine, as a question of fact, whether or not traffic is, or has been, carried under substantially similar circumstances and conditions and whether there has, in any case, been unjust discrimination, or undue or unreasonable preference or advantage, or prejudice or disadvantage, within the meaning of the Act.

The Board has always held that the existence of competition creates a dissimilarity of circumstances and conditions justifying lower rates where the dissimilar circumstances created by such competition exist and that this does not constitute unjust discrimination, or undue preference, of the character prohibited by the Railway Act. The whole rate structure of the country is interspersed with rates of this character. In the present application, manufacturers of the same commodity are shipping from St. Pacome and Ste. Apolline to Montreal and Quebec in competition with each other and the distances from these shipping points to these destinations are approximately the same. There is a water route available from St. Pacome; there is none from Ste. Apolline. At St. Pacome, the railway finds itself subjected to intense competition by an unregulated competitive transportation agency, namely, a water carrier, and, to retain some of the traffic to its rails, establishes a competitive rate substantially lower than the normal rate. It does not make any change in its rate from Ste. Apolline, because there is not a similarity of circumstances and conditions, namely, water competition. The shipper at Ste. Apolline avers that he is detrimentally affected to the extent of the reduction made by the establishment of the competitive rate from St. Pacome and contends he is entitled to the same rate. Carried to its logical conclusion, this would mean that a railway company could not establish any lower rate from a competitive point than from a non-competitive point, the effect of which would be to entirely nullify the express provisions in the Railway Act permitting the railways to establish competitive rates between competitive points without being required to extend them to points where no similar competitive situation exists.

It has not been proven that the applicant has suffered detriment from the establishment of this competitive rate by the railway. The same, or lower, rates are available via the water carriers who are not subject to control or regulation as to rates and it is, therefore, simply a question of whether or not the railway will participate, to some extent, in a movement which will take place in any event. The applicant is in precisely the same position in the presence of the competitive rail rate as if that rate had never been established, that is to say, in the absence of the publication of the competitive rate by the railway, applicant would have no grounds upon which to approach the Board alleging detriment or rate discrimination, but it is not apparent that his position would then be any different from what it is to-day. The situation complained of is created by the low rates via unregulated transportation agencies. The railways cannot rightly be charged with producing discrimination unless it can be demonstrated that it was created by their action and

that they could, by their own unaided acts, remove it. We have no such showing here. The applicant presented no evidence concerning the reasonableness of the present rates per se from Ste. Apolline. For the reasons herein outlined, the application for reduced rates on lumber must be dismissed.

CARLOAD RATES

Applicant asked, without pointing to any cogent reasons in support thereof, that the transportation cost on various commodities be established on the basis of a fixed amount per carload, instead of on a rate per 100 pounds. No such practice has existed for a very great many years. The general rule is to charge by weight, where weight can be a proper measure, and, when a carload rate is established, to fix a minimum weight for the load to be taken as a car lot and to charge by the 100 pounds for any excess. Generally speaking—although there are exceptions where the minimum weight and rate are complementary in dealing with the question of rate burden—the carriers should establish a minimum weight that can be reasonably loaded into a car of the size furnished. The system of charging by weight is more just than any other. It is the only system whereby the charge is made proportionate to the service rendered. It is the only system whereby inequalities amongst shippers resulting from differences in the size of cars could be obviated. It surely would not be deemed reasonable to allow a shipper to load up a car at discretion without the quantity being taken into account in determining the carrier's charges. The reasons ought to be very imperative which would require the abolishment of a rule, which excludes favouritism, to make way for another, which not only admits of, but invites, it. We were pointed to none in this case.

OTTAWA, ONT., February 12, 1937.

The Assistant Chief Commissioner concurred.

Application of J. Maurice Chouinard, Tourville, Que., for an Order directing a reduction in Freight Rates on Mill Refuse and Lumber, in carloads, from Ste. Apolline and other points on the Armagh Subdivision of the Canadian National Railways to Quebec and Montreal.

File 26901.49.3

GARCEAU, DEPUTY CHIEF COMMISSIONER (Dissenting):

I am in agreement with that part of the majority judgment which deals with Mr. Chouinard's application for a fixed charge per carload, instead of the present method of setting charges according to weight, for the reason mentioned therein, i.e., that the present practice is the most equitable.

I also concur in the conclusions arrived at as to the application for a reduction in the rate on mill refuse from Ste. Apolline and other points on the Transcontinental to Quebec and Montreal; the evidence heard and the figures on record failed to show that there is any discrimination in the rate on mill refuse from Ste. Apolline, as compared with the rates from points located an equal distance from the markets.

However, with due deference to contrary opinions and the judgments quoted in the majority judgment, I would grant the application for a reduction in rates on lumber, to overcome the disadvantage at which the applicant is placed owing to the competitive rate enjoyed by his competitors located along the St. Lawrence river, at St. Jean Port Joli, Ste. Anne, St. Pacome and Isle Verte.

There is a difference of $1.50 per 1,000 feet in the rate charged from Ste. Apolline and the special competitive rate enjoyed by the privileged communities along the St. Lawrence river, on the Intercolonial Railway, and applicant states that owing to this higher freight charge, he is unable to compete with shippers who enjoy the competitive rate to Montreal and Quebec markets and he adds that he could dispose of 300,000 feet of lumber which, under such conditions, it would have been unprofitable to ship.

In my opinion, the jurisprudence quoted in the majority judgment in support of dismissal of the application does not bind the Board in this matter. The railway has the right to issue competitive tariffs to foster its trade but, in doing so, it must not overlook its primary duty as a public utility built and subsidized by public moneys, i.e., to promote the development and welfare of the country.

In the present instance, the railway company reduced its rates from Isle Verte and intermediate points to Quebec and Montreal, in order to keep to the rails a remunerative traffic which otherwise would have gone to water transportation; but, in my view, the same reduction should have been granted to communities of the vicinity, at least to those situate an equal distance from the same markets, in order to avoid an unjust discrimination which is detrimental to public weal and prohibited by law. (Section 320.)

Section 314 (4) of the Railway Act says:—

> "No toll shall be charged which unjustly discriminates between different localities . . ."

and the Board has defined what constitutes "unjust discrimination" thus:—

> "I do not understand that there is anything wrong or evil in discrimination so long as it does not hurt anybody. The evil of it, as I understand it, is that because persons or localities are discriminated against, it results in unfair play and injury to the individuals or to the localities affected." (Mr. Justice Mabee, 11 C.R.C., p. 370.)
>
> "It has been said over and over again in the decisions of the Board as well as in the decisions of other regulative tribunals that the criteria of unjust discrimination are not to be found in abstract conditions. Unjust discrimination is not concerned with mere comparisons of mileage. It is concerned with the very tangible and concrete question: is there competition between the article which has a higher rate charge and the article which has a lower rate charge? If two articles of the same or identical nature are subjected to different rate treatment, then the rate is one factor which may render it difficult for the individual with the different rate or practice to do business in a common market; that is, the material question is: "Is there actual competition in the same market between the parties affected?" (Calgary Live Stock Exchange vs. C.N.R. and C.P.R. Cos., 29 C.R.C., p. 227.)

In Consumers Glass Co. Ltd., v. Canadian Freight Assoc., 38 C.R.C. p. 89, the Board declared:—

> "It is the duty of the Board to determine on the facts and circumstances developed in each individual complaint whether or not unjust discrimination does exist and if it does, this condition must be remedied."

It seems to me that the evidence shows very clearly that there is competition between the shippers of Ste. Apolline and those of stations on the Intercolonial Railway, on the same markets; that the disparity of freight rates places the former at a great disadvantage.

The majority judgment says:—

> "It has not been proven that the Applicant has suffered detriment from the establishment of this competitive rate by the railway."

I do not believe this statement is substantiated by the facts. I shall quote from the judgment, p. 6:—

"It is stated that the shippers are prepared to pay a somewhat higher rail rate than offered by the schooners, because of certain advantages in rail transportation and the competitive rates which they establish enable the railway to retain some of the business."

In other words, shippers along the St. Lawrence formerly had at their disposal a cheap but slow and irregular water service—consequently, an unpopular service; they could not patronize it extensively to supply the wood dealers of Montreal and Quebec who prefer not to keep much stock on hand and require immediate delivery of the lumber ordered. Since the competitive tariff became effective, they enjoy the railway company's regular freight service for a price slightly higher than the water transportation rate but much cheaper than the rate charged their competitors on the Transcontinental. In consequence, they are now able to supply lumber dealers in Montreal and Quebec with quick shipments at $1.50 per 1,000 feet less than their competitors of the Transcontinental line. It is readily apparent, therefore, that the latter have suffered detriment since the inception of the preferential rates on the Intercolonial line; unquestionably, they have lost a trade which, formerly, they shared with shippers of St. Jean Port Joli, Ste. Anne, St. Pacome and Isle Verte, for competition under such conditions is impossible.

Is the railway company's action in reducing rates on its line along the St. Lawrence, while not extending the same lower tariff to its parallel transcontinental line, justifiable?

The dispositions of the Railway Act regarding competitive rates give the railway companies the discretion of establishing lower tolls at certain competitive points and direct the Board to determine the points to which such reduced rates shall be granted. Section 314-(6) says:—

"The Board may declare that any places are competitive points within the meaning of this Act."

Where the railway company favours a certain locality with rates that seem unfair in comparison to normal tolls for the same distance, such a reduction is justifiable if it is actuated by the necessity of meeting competition from another transportation agency, providing the same privileges are also granted to other points under substantially similar circumstances and located an equal distance from a common market. We must remember that the principle of equality is prescribed by the Railway Act and that any exceptions that may be made to that rule of equality are enumerated therein. Section 314-(5) specifies:—

"The Board shall not approve or allow any toll which for the like description of goods or for passengers carried under substantially similar circumstances and conditions in the same direction over the same line or route is greater for a shorter than for a longer distance, within which such shorter distance is included, unless the Board is satisfied that, owing to competition, it is expedient to allow such toll."

and Section 329-(4) adds:—

"The competitive tariffs shall specify the toll or tolls, lower than in the standard freight tariff, to be charged by the company for any class or classes of the freight classification, or for any commodity or commodities, to or from any specified point or points which the Board may deem or have declared to be competitive points not subject to the long and short haul clause under the provisions of this Act."

The present case does not fall within the exception and the general rule of equality applies. Therefore, the railway company acted arbitrarily and in contravention of the dispositions of the Act in this instance; I am of the opinion that the Board should order equality of tolls for Ste. Apolline and Isle Verte, which equality would have been granted if, instead of being part

of the Canadian National Railway system, the Transcontinental line were operated by another company; because the Canadian National Railway has a monopoly of railway transportation in that territory and controls both lines, the shippers should not be deprived of the advantages they would enjoy if served by competing carriers.

Section 319 of the Railway Act says:—

> "Whenever it is shown that any railway company charges one person, company, or class of persons, or the persons in any district, lower tolls for the same or similar goods, or lower tolls, for the same or similar services, than it charges to other persons, companies, or classes of persons, or to the persons in another district, or makes any difference in treatment in respect of such companies or persons, the burden of *proving* that such lower toll or difference in treatment does not amount to an undue preference or an unjust discrimination, shall lie on the company."

This section 319 is subsequent to the above quoted sections (314 and 317) and must be read as having reference to them. It imposes on the railway company, *in every instance* where there is different treatment, the obligation to prove that this treatment does not constitute an unjust discrimination.

There is no exception to this section: it is imperative.

The applicant has established that he suffered prejudice, losses; the company has failed to justify its conduct as it was obliged to do by section 319.

The findings of the following judgments are *ad rem*, viz:—

> Grand Trunk Ry. Co. v. Christie Henderson & Co., 9 C.R.C. p. 502:—
>
> "Held, that under section 315 (4) (now 314 (4)) of the Railway Act it is required that *all competitive industries should be treated alike.*
>
> "Held, that the railway company were not entitled to make an extra charge for switching charges."
>
> Pilon vs. Grand Trunk Ry. Co., 16 C.R.C., p. 433:—
>
> "When it appears that, at a large number of places in Ontario, under more or less similar circumstances and conditions, no extra charge is made for switching traffic from sidings located between stations, it is unjust discrimination to make an extra charge of $3 per car for switching traffic of the applicant, a brick maker, from a siding 2½ miles from a station, C., who is in competition with brick makers at said station."

I would grant that part of the application which concerns rates on lumber and order the railway to give to Ste. Apolline and other points on the Transcontinental line the same rates as are charged to shippers of Isle Verte, St. Pacome, etc., during the period from April 15 to November 30.

OTTAWA, ONT., February 16, 1937.

TRADUCTION

Requête de J.-Maurice Chouinard, de Tourville, P.Q., demandant qu'une Ordonnance soit rendue prescrivant une diminution dans les tarifs des marchandises pour le transport des rebuts de moulin et du bois de charpente en wagons à chargements complets, de Sainte-Apolline et autres endroits sur la Subdivision d'Armagh de la Compagnie des chemins de fer Nationaux du Canada, à Québec et à Montréal. Dossier No 26901.49.3

GUTHRIE, Commissaire en chef:

JUGEMENT

Cette requête fut entendue à Québec le 11 janvier 1937 en présence du requérant et des représentants des chemins de fer Nationaux du Canada. Elle concerne les tarifs de transport des rebuts de moulin et du bois de charpente en chargements complets de Sainte-Apolline à Québec et à Montréal, et demande que toute révision qui sera prescrite comprenne aussi d'autres endroits d'expédition qui se trouvent sur la subdivision d'Armagh des chemins de fer Nationaux du Canada. Les tarifs des marchandises mentionnés dans le présent jugement sont exprimés en cents par 100 livres, sauf où il est autrement spécifié.

REBUTS DE MOULIN

La plainte au sujet des taux de transport des rebuts de moulin, énoncée brièvement, est à l'effet que de Sainte-Apolline à Québec les frais de transport équivalent à 80 et jusqu'à 90 pour cent de leur valeur lorsqu'ils sont chargés au point d'expédition; que lorsqu'ils sont expédiés à Montréal, ils sont de beaucoup plus élevés. On demande une réduction de 25 pour cent dans les tarifs actuels. Les taux actuels sont: de Sainte-Apolline à Québec, une distance de 96 milles, de 5c, et à Montréal, une distance de 234 milles, de 9c. Le tarif actuel de transport à Québec rapporte un gain de 1.0416 cents par tonne par mille, et à Montréal, un gain de .7692 cents par tonne par mille. Ces gains sont peu élevés considérant la distance parcourue.

Sur la question du rapport entre les frais de transport et la valeur des denrées, on peut dire qu'il n'est pas dans les attributions des chemins de fer de dicter les endroits où la fabrication devra être faite ou non ou, au moyen de rajustements des tarifs ou autrement, de choisir ou de contrôler les marchés où leurs expéditeurs devront acheter ou vendre. Tout expéditeur a droit à un tarif raisonnable; mais si l'espèce ou la valeur d'une denrée qu'on offre pour être transportée est telle qu'elle exige un tarif déraisonnablement bas, il n'y a pas d'obligation légale pour le voiturier de se rendre à cette demande. Les rebuts de moulin, comme le nom l'indique, sont des produits d'une classe très inférieure dont le transport sur de longues distances ne peut pas toujours être logique ou pratique, et autant que l'administration de la loi est concernée, le voiturier a rempli son devoir sous ce rapport lorsqu'il a accordé des tarifs raisonnables et non injustes.

Les cas où les frais de transport se rapprochent de ou excèdent la valeur du produit au point d'expédition ne sont pas rares. Cette situation existe par rapport à plusieurs produits de peu de valeur qui sont transportés sur des distances considérables. On peut citer deux ou trois cas entre plusieurs.

Au vol. 15 des Jugements, Ordonnances et Décisions de la Commission, page 15,—plainte de la Eustis Mining Company, de Eustis, P.Q., le tarif des marchandises de Eustis à Hamilton, suivant la directive de la Commission, était équivalent à la valeur du produit à la mine f.à.b.

Au vol. 22 des Jugements, Ordonnances et Décisions de la Commission, page 163—requête des Canadian Sugar Factories, Limited, de Ray-

mond, Alta. Les tarifs sur la pulpe humide de la betterave à sucre que la Commission a trouvés raisonnables, étaient à peu près le double de la valeur du produit au point d'expédition.

Au vol. 23 des Jugements, Ordonnances et Décisions de la Commission, page 281—requête de la Canada Wood Products Company, de St. Thomas, Ont. Dans l'affaire des tarifs de transport du bois de charpente consistant en morceaux courts ou "bouts de chevêtre", les frais de transport en excédaient la valeur au moulin f.à.b., point d'origine.

Il est bon d'attirer l'attention sur la considération spéciale qu'on a accordée relativement aux tarifs sur le bois de corde, les croûtes et les rebuts de moulin par rapport aux diverses augmentations et diminutions des tarifs depuis l'année 1916. En 1918, alors que par l'arrêté-en-conseil C.P. No. 1863, daté du 27 juillet 1918, les tarifs en général furent augmentés de 25 pour cent, on a permis une augmentation de un pour cent seulement par 100 livres sur le bois de corde, les croûtes et les rebuts de moulin pour les fins de chauffage. Par l'ordonnance générale N° 308, datée du 9 septembre 1920, relativement à l'augmentation de 40 pour cent dans les tarifs canadiens de transport des marchandises, l'augmentation des tarifs sur ces produits employés exclusivement comme combustible, fut limité à 10 pour 100. Alors, par l'ordonnance générale N° 351, datée du 26 novembre 1921, la Commission ordonna "que les tarifs sur le bois de corde, les croûtes, les rognures et les rebuts de moulin pour fins de chauffage, soient rétablis sur la base en vigueur avant le 13 septembre 1920."

Ci-après sont indiqués les tarifs pour le transport des rebuts de moulin de Sainte-Apolline à Québec, une distance de 96 milles, et de Sainte-Apolline à Montréal, une distance de 234 milles, comparés aux tarifs réguliers actuels (pour les distinguer des tarifs qui peuvent être classifiés comme tarifs concurrentiels) sur d'autres produits de peu de valeur pour des parcours de mêmes distances dans l'Est du Canada, en dehors du territoire relevant des dispositions de la Loi des Tarifs des Marchandises des Provinces Maritimes.

	96 milles	234 milles
Rebuts de moulin, de Sainte-Apolline, Tarif actuel	5 cts	9 cts
Rebuts de moulin, de Sainte-Apolline, Tarif demandé	3¾ "	6¾ "
Rebuts de moulin dans l'Est du Canada à l'ouest de la Jonction de Diamond..	6 "	9½ "
Cendre de charbon, argile ordinaire, scorie de fournaise, gypse de roc et pierre des champs..	11½ "	16½ "
Gravier, sable de construction, pierre concassée..	8¼ "	11¼ "
Sable de moulage, sable silicique, gravier silicique	12 "	16½ "
Sable d'amiante, et gravier et blocaille..	10½ "	14 "
Poussière de pierre et poussière d'ardoise ou pierre broyée..	9½ "	11 "
Matériel de construction de routes, consistant en pierre (concassée, broyée ou réduite en poussière), déchets de criblage de pierre, pétrosilex, gravier, sable ou scorie mélangée ou enduite de bitume, d'huile, de goudron ou de chaux..	9¼ "	12¼ "

Il n'y a pas de point d'expédition de même ou de plus grande distance de Québec ou de Montréal qui bénéficie d'un tarif plus bas que celui qui est établi de Sainte-Apolline. Beaucoup d'endroits de même distance expédient à l'heure qu'il est ces rebuts de moulin jusqu'à Québec et Montréal à des taux plus élevés pour la raison qu'ils se trouvent en dehors du territoire choisi tel que décrit dans la Loi des Tarifs des Marchandises des Provinces Maritimes, tandis que Sainte-Apolline se trouve dans les limites de ce territoire choisi et que les taux de cet endroit sont, par conséquent, un peu moins élevés que ceux qui s'appliquent aux distances parcourues entièrement à l'ouest de la Jonction de Diamond, comme l'indique le tableau ci-dessus.

L'Exhibit n° 5 indique qu'au cours de la période du 1er décembre 1932 au 31 mars 1933, les chemins de fer Nationaux du Canada ont remorqué 293 chargements complets de croûtes, etc., de diverses stations à Montréal, et 108 de ces wagons ont payé des taux excédant le tarif de 9c. à partir de Sainte-Apolline, savoir:

Nombre de wagons	Taux payé
2	9½ cts
32	10 "
4	10½ "
4	11 "
49	11½ "
13	12 "
4	12½ "

Ce qui précède indique que ceux qui font concurrence au requérant expédient à Montréal et à des taux plus élevés que ceux payés par lui. L'exhibit n° 8 fait voir qu'entre le 1er novembre 1934 et le 30 avril 1935, les chemins de fer Nationaux du Canada ont remorqué 47 wagons de croûtes et de rebuts de moulin à Québec; que dans aucun cas, le taux payé n'a été moins de 5c. (le tarif de Sainte-Apolline) et que pour un certain nombre de wagons on a payé des taux de 5½, 6, 6½, 8½ et 9 cents. Le même exhibit indique qu'entre le 1er novembre 1935 et le 30 avril 1936, il y a eu 66 wagons de croûtes expédiés à Québec; et que dans aucun cas le tarif payé n'a été moins de 5c. et que des taux aussi élevés que 9c. ont été payés. L'exhibit n° 9 portant sur 163 wagons expédiés au cours d'une période plus récente indique le même état de choses.

Les tarifs pour le transport des rebuts de moulin sont établis sur une base très peu élevée; nul autre expéditeur ne s'est plaint à leur sujet; ce que le requérant a soumis ne justifie pas la Commission d'ordonner une diminution de ces tarifs, laquelle, d'ailleurs, demanderait d'être générale dans son application pour la raison que les taux qui s'appliquent au requérant ne pourraient pas être considérés séparément et être isolés de la base générale de ces tarifs dans l'Est du Canada.

BOIS DE CHARPENTE

Le grief allégué dans la plainte au sujet des tarifs pour le transport du bois de charpente provient du fait que de St-Jean Port-Joli, Ste-Anne, St-Pacôme et l'Ile-Verte situés sur la rive du St-Laurent, le chemin de fer publie au cours de la saison de navigation, à savoir: du 15 avril au 30 novembre, des tarifs concurrentiels pour faire face à la concurrence par eau, tandis que de Sainte-Apolline, etc., sur un autre embranchement du chemin de fer, à une certaine distance du fleuve, et non sujets aux mêmes conditions concurrentielles, des tarifs réduits ne sont pas publiés. Le requérant désire qu'on lui accorde le même traitement par rapport aux tarifs que celui qui est accordé aux endroits concurrentiels ci-dessus. De Sainte-Apolline à Québec, le tarif de transport est de 12 cents tandis que le tarif de concurrence d'été à partir des autres endroits mentionnés est de 9 cents. A destination de Montréal, les taux sont de 17 et de 12 cents respectivement.

La concurrence aux endroits situés le long du fleuve St-Laurent provient des goélettes qui vont à Québec et à Montréal pour obtenir des cargaisons à destination de l'Est, et ces goélettes sont consentantes à prendre tout le trafic qui leur est offert, à des bas prix, dans leur parcours à destination de l'Ouest. On dit que les expéditeurs sont prêts à payer un taux par rail un peu plus élevé que celui que leur offrent ces goélettes à cause de certains avantages dans le transport par rail, et que les tarifs concurrentiels que le chemin de fer publie permet à celui-ci de garder une partie de ce trafic. Le tarif des goélettes à partir des endroits en question jusqu'à Montréal est, dit-on, de $2.00 par 1,000 pieds, et, jusqu'à Québec, de $1.00 par 1,000 pieds, auquel il faut ajouter les frais de camionnage et de chargement qui sont de $1.00.

Le requérant déclare que pour ce qui est du bois de charpente expédié à Montréal, il subit une différence désavantageuse de $1.50 par 1,000 pieds, comparativement à ses concurrents aux points concurrentiels de transport par eau que j'ai mentionnés, ce montant constituant la différence dans le tarif. Si le requérant faisait concurrence à un expéditeur de bois de charpente situé à une distance beaucoup plus courte de Montréal avec le même résultat quant à la différence de tarif à cause de la différence dans le parcours milliaire, il ne pourrait pas, il va sans dire, raisonnablement demander qu'on lui accorde le même tarif que celui qui est accordé à l'expéditeur qui bénéficie d'un parcours milliaire plus court, parce que, évidemment, la distance parcourue régit le tarif imposé, et parce qu'il a toujours été maintenu que la Commission n'avait pas le pouvoir d'ordonner des rajustements de tarifs tendant à égaliser les avantages géographiques ou les désavantages de lieux.

Les articles 314, 329 et 332 de la Loi des chemins de fer renferment des dispositions formelles permettant aux chemins de fer d'établir des tarifs de concurrence. L'article 314 prescrit qu'il doit y avoir égalité de taux lorsque le trafic s'effectue dans "des conditions et circonstances essentiellement analogues." L'article 316 défend au chemin de fer de donner une préférence ou avantage indu ou déraisonnable, ou d'exposer un genre de trafic à subir un tort ou un désavantage indu ou déraisonnable. Dans l'article 317, il est prévu que la Commission peut décider à titre de question de fait le point de savoir si le transport s'est ou ne s'est pas effectué dans des conditions ou des circonstances essentiellement analogues, et s'il y a eu, dans quelque cas, disparité injuste ou préférence ou avantage indu ou déraisonnable ou préjudice ou désavantage, au sens de la présente loi.

La Commission a toujours maintenu que l'existence de la concurrence crée une dissemblance de circonstances et de conditions qui justifie l'établissement de tarifs moins élevés là où des circonstances dissemblables créées par telle concurrence existent, et que ceci ne constitue pas une disparité injuste ou une préférence indue de la nature de celle qui est prohibée par la Loi des chemins de fer.

Toute la tarification en ce pays est entremêlée de tarifs de cette nature. Dans la présente requête, des manufacturiers du même produit expédient de Saint-Pacôme et de Sainte-Apolline à Montréal et à Québec, se faisant concurrence les uns aux autres, et les distances de ces points d'expédition à ces destinations sont à peu près les mêmes. Il y a une route par eau de disponible de Saint-Pacôme; il n'y en a pas de Sainte-Apolline. A Saint-Pacôme le chemin de fer subit lui-même une forte compétition de la part d'un moyen de transport de concurrence non réglementée, à savoir d'un voiturier par eau, et, pour garder un peu de trafic par rail il établit un tarif concurrentiel de beaucoup plus bas que le tarif régulier. Le chemin de fer ne change pas son tarif de Sainte-Apolline parce qu'il n'y a pas de similarité de circonstances et de conditions, à savoir, la concurrence par eau. L'expéditeur de Sainte-Apolline affirme qu'il se trouve désavantageusement affecté jusqu'à concurrence de la réduction effectuée par l'établissement du tarif concurrentiel de Saint-Pacôme, et prétend qu'il a droit au même tarif. Pris dans sa conclusion logique, ceci voudrait dire qu'une compagnie de chemin de fer ne pourrait pas établir de tarif plus bas d'un point de concurrence que d'un point de non concurrence, dont l'effet serait d'annuler complètement les dispositions formelles de la Loi des chemins de fer qui permettent aux chemins de fer d'établir des tarifs concurrentiels entre des points de concurrence sans être requis de les appliquer aux endroits où il n'existe pas de situation semblable de concurrence.

On n'a pas prouvé que le requérant a souffert de préjudice résultant de l'établissement de ce tarif de concurrence par la compagnie de chemin de fer. Les mêmes ou des taux plus bas peuvent être obtenus de la part des voituriers par eau qui ne sont pas sujets à un contrôle ou à une réglementation concernant les tarifs, et par conséquent c'est une simple question de savoir si le chemin de

fer participera ou non jusqu'à un certain point dans un mouvement de trafic qui, à tout événement, devra s'effectuer. Le requérant est précisément dans la même position en présence du tarif concurrentiel par rail que si ce tarif n'avait jamais été établi, c'est-à-dire qu'en l'absence de la publication d'un tarif de concurrence par le chemin de fer, le requérant n'aurait pas de raisons sur lesquelles il pourrait se baser pour venir alléguer devant la Commission qu'il y a préjudice ou disparité de tarif, mais il n'appert pas que sa position serait alors toute différente de ce qu'elle est aujourd'hui. La situation dont on se plaint provient des bas tarifs établis par des voituriers non réglémentés. Les chemins de fer ne peuvent pas à juste titre être accusés de créer des disparités injustes à moins qu'on ne puisse démontrer que ces disparités furent créées par leur action, et qu'ils pourraient de leur propre initiative, sans aide, les faire disparaître. Il n'y a rien ici qui puisse indiquer cet état de choses. Le requérant n'a pas apporté de preuve concernant l'équité des tarifs actuels per se de Sainte-Apolline. Pour les raisons que je viens d'énumérer, la requête pour une diminution des tarifs sur le bois de charpente doit être renvoyée.

TARIFS DE TRANSPORT DES CHARGEMENTS COMPLETS

Le requérant a demandé sans apporter de fortes raisons à l'appui, que les frais de transport pour divers produits soient établis sur la base d'un montant fixe par chargements complets au lieu d'un taux par 100 livres. Une telle pratique n'a pas existé depuis un très grand nombre d'années. La règle générale est d'établir ces frais d'après le poids lorsque celui-ci peut être une mesure efficace, et lorsqu'un tarif pour chargements complets est établi, de fixer un poids minimum pour le chargement considéré comme un chargement de wagon, et de demander tant par 100 livres pour tout excédent. Généralement parlant, — bien qu'il y ait des exceptions où le poids minimum et le tarif sont complémentaires lorsqu'il s'agit de la question de l'établissement de tarifs, — les voituriers devraient établir un poids minimum pour les marchandises qui peuvent raisonnablement être chargées dans un wagon de la dimension fournie. Cette méthode d'établir les frais de transport par le poids est plus juste que toute autre. C'est la seule méthode par laquelle le prix est fixé en proportion du service rendu. C'est aussi la seule méthode par laquelle les inégalités parmi les expéditeurs résultant de différences dans la dimension des wagons pouvaient être évitées. Il ne serait certainement pas jugé raisonnable de permettre à un expéditeur de charger un wagon à discrétion sans tenir compte de la quantité des marchandises, dans la détermination des taux du voiturier. Les raisons doivent être bien impératives pour exiger l'abolition d'une règle qui exclut tout favoritisme, pour faire place à une autre qui non seulement admet tel favoritisme, mais l'invite. On ne nous en a pas signalé dans le présent cas.

OTTAWA, ONT., le 12 février 1937.

Le Commissaire en chef adjoint s'est rallié au jugement ci-dessus.

Requête de J. Maurice Chouinard, de Tourville, P.Q., demandant qu'une Ordonnance soit rendue prescrivant une diminution dans les tarifs des marchandises pour le transport des rebuts de moulin et du bois de charpente en wagons à chargements complets, de Sainte-Apolline et autres endroits sur la Subdivision d'Armagh des chemins de fer Nationaux du Canada, à Québec et à Montréal.

Dossier N° 26901. 49. 3.

GARCEAU, Commissaire en chef suppléant: (Dissident).

JUGEMENT

Je suis d'accord avec la majorité des commissaires quant à la partie de leur jugement qui traite de la requête de M. Chouinard relativement à l'établissement d'un montant fixe par chargements complets au lieu de la présente méthode d'établir les frais selon le poids pour les raisons y mentionnées, à savoir: que la présente pratique est la plus équitable.

Je me rallie aussi aux conclusions auxquelles ils en sont arrivés au sujet de la requête pour une diminution de tarif pour le transport des rebuts de moulin de Sainte-Apolline et autres endroits sur le Transcontinental, à Québec et à Montréal; la preuve qui a été faite et les chiffres au dossier n'ont pas réussi à démontrer qu'il y a disparité injuste dans le tarif de transport des rebuts de moulin, de Sainte-Apolline, comparativement aux tarifs d'endroits situés à égales distances des marchés.

Toutefois, avec tout le respect que j'ai pour les opinions contraires et les jugements cités dans le jugement de la majorité, j'accorderais la requête pour ce qui a trait à la demande d'une diminution de tarif pour le transport du bois de charpente, afin de faire disparaître le désavantage que le requérant subit à cause du tarif concurrentiel dont bénéficient ses concurrents qui se trouve le long du fleuve Saint-Laurent, à Saint-Jean Port-Joli, Sainte-Anne, Saint-Pacôme et à l'Ile-Verte.

Il y a une différence de $1.50 par 1,000 pieds entre le tarif demandé de Sainte-Apolline et le tarif concurrentiel spécial dont bénéficient les localités privilégiées situées le long du fleuve Saint-Laurent, sur le chemin de fer Intercolonial, et le requérant déclare qu'à cause de ce tarif plus élevé il ne peut pas faire concurrence aux expéditeurs qui bénéficient du tarif concurrentiel à destination des marchés de Montréal et de Québec, et il ajoute qu'il aurait pu disposer de 300,000 pieds de bois de charpente que dans de telles circonstances il n'aurait pas été profitable d'expédier.

A mon avis, la jurisprudence citée dans le jugement de la majorité à l'appui du renvoi de la requête, ne lie pas la Commission dans ce cas-ci. Les chemins de fer ont le droit de publier des tarifs de concurrence pour développer leur commerce, mais, en ce faisant, ils ne doivent pas ignorer leur premier devoir comme services publics établis et subventionnés par les fonds publics, c'est-à-dire, celui de promouvoir le développement et le bien-être du pays.

Dans le cas présent, la compagnie de chemin de fer a réduit ses tarifs de l'Ile-Verte et des stations intermédiaires à Québec et à Montréal afin de garder pour elle-même un trafic rémunérateur qui, autrement, serait allé aux voituriers par eau; mais d'après moi la même réduction aurait dû être accordée aux endroits du voisinage, au moins à ceux qui sont situés à égales distances des mêmes marchés afin d'éviter une disparité injuste qui est préjudiciable au bien-être public et prohibée par la loi (article 320).

L'article 314-(4) de la Loi des chemins de fer dit: —

> " Il ne peut être exigé de taxes dont l'imposition établirait une disparité en faveur ou au détriment de différentes localités..."

et la Commission a défini ce qui constitue une " disparité injuste " ainsi: —

> " Je ne comprends pas qu'il y ait quelque chose d'erroné ou de nuisible dans la disparité aussi longtemps qu'elle ne nuit à personne. Le mal qu'il y a, comme je le comprends, est dû au fait que parce que des personnes ou des localités subissent la disparité, il en résulte un traitement injuste et un désavantage aux particuliers ou aux localités qui en sont affectés " (M. le juge Mabee, 11 C.R.C., p. 370).
>
> " On a souvent répété dans des décisions de la Commission aussi bien que dans des décisions d'autres tribunaux exerçant les pouvoirs de réglementation, qu'on ne doit pas chercher de criteriums de disparité injuste dans des conditions abstraites. La disparité injuste ne se borne pas à de simples comparaisons de parcours milliaires. Elle se rattache au fait lui-même, tangible et concret; existe-t-il une concurrence entre l'article qui subit un taux plus élevé et celui qui en subit un plus bas? Si deux articles de même genre ou de nature identique sont sujets à un traitement différent quant au tarif, le tarif devient alors un facteur qui peut rendre difficile pour le particulier qui subit un tarif ou un traitement différent de faire des affaires sur un marché commun; c'est-à-dire que la question importante est — " Existe-t-il actuellement une concurrence sur le même marché entre les parties affectées? " (Calgary Live Stock Exchange, *vs* C.N.R. and C.P.R., 29 C.R.C., p. 227).

Dans la cause de la *Consumers Glass Co. Ltd., vs Canadian Freight Association,* 38, C.R.C., p. 89, la Commission a déclaré: —

> " Il est du devoir de la Commission de déterminer sur les faits et circonstances que comporte chaque plainte individuelle s'il existe ou non une disparité injuste, et s'il en existe, on doit y remédier."

Il me semble que la preuve indique bien clairement qu'il existe une concurrence sur les mêmes marchés entre les expéditeurs de Sainte-Apolline et ceux qui sont desservis par les stations du chemin de fer Intercolonial; que la disparité des tarifs des marchandises place ceux-là dans une situation très désavantageuse.

Le jugement de la majorité dit: —

> " Il n'a pas été prouvé que le requérant a souffert de préjudice résultant de l'établissement de ce tarif concurrentiel par la compagnie de chemin de fer."

Je ne crois pas que cette déclaration est établie par les faits. Je cite ce qui suit du jugement, à la page 6: —

> " On dit que les expéditeurs sont prêts à payer un taux par rail un peu plus élevé que celui que leur offrent ces goélettes à cause de certains avantages dans le transport par rail, et que les tarifs concurrentiels que le chemin de fer publie permet à celui-ci de garder une partie de ce trafic."

En d'autres termes, les expéditeurs le long du fleuve Saint-Laurent avaient autrefois à leur disposition un service de transport par eau à bon marché, mais lent et irrégulier — conséquemment un service impopulaire; ils ne pouvaient pas beaucoup l'encourager pour approvisionner les marchands de bois de Montréal et de Québec qui préfèrent ne pas garder beaucoup de bois en réserve et demandent la livraison immédiate du bois de charpente commandé. Depuis que le tarif concurrentiel est devenu en vigueur, ils bénéficient du service de fret régulier du chemin de fer à un taux légèrement plus élevé que celui du transport par eau mais beaucoup moins élevé que le taux qui est demandé à leurs concurrents sur le

Transcontinental. En conséquence, ils sont maintenant en mesure d'approvisionner les marchands de bois de Montréal et de Québec par des expéditions rapides à $1.50 par 1,000 pieds de moins que leurs concurrents sur la ligne du Transcontinental. C'est pourquoi, il est tout à fait évident que ceux-ci ont souffert un préjudice depuis l'établissement des tarifs préférentiels sur la ligne de l'Intercolonial; incontestablement, ils ont perdu un marché qu'ils partageaient autrefois avec les expéditeurs de Saint-Jean Port-Joli, Sainte-Anne, Saint-Pacôme et de l'Ile-Verte, car la concurrence dans de telles conditions n'est pas possible.

Est-ce que l'attitude de la compagnie de chemin de fer en réduisant ses tarifs sur sa ligne le long du fleuve St-Laurent, tout en n'appliquant pas le même tarif moins élevé à sa ligne parallèle transcontinentale, est justifiable?

Les dispositions de la Loi des chemins de fer relatives aux tarifs de concurrence donnent aux compagnies de chemin de fer le pouvoir discrétionnaire d'établir des tarifs moins élevés à certains endroits de concurrence, et autorisent la Commission à déterminer les endroits auxquels ces réductions de tarif doivent être accordées. L'article 314 (6) prescrit: —

> "La Commission peut déclarer que n'importe quels endroits sont des points de concurrence au sens de la présente loi."

Lorsque la compagnie du chemin de fer favorise une certaine localité par des tarifs qui semblent déraisonnables en comparaison avec les taux réguliers pour la même distance, une telle réduction est justifiable si elle est motivée par la nécessité de faire face à la concurrence d'un autre moyen de transport, pourvu que les mêmes privilèges soient accordés aux autres endroits qui se trouvent dans des conditions essentiellement analogues et situés à une égale distance d'un marché commun. Nous devons nous rappeler que le principe d'égalité est prescrit par la Loi des chemins de fer et que toutes exceptions à cette règle d'égalité y sont énumérées. L'article 314 (5) spécifie:—

> "La Commission ne doit approuver ni permettre, pour les transports de voyageurs ou des marchandises, effectués dans des conditions et des circonstances essentiellement analogues, et dans la même direction ou sur la même ligne, des taxes plus élevées pour une plus courte distance que pour un plus long parcours, quand cette plus courte distance fait partie de ce plus long parcours, à moins que la Commission ne soit convaincue, vu la concurrence, de l'opportunité d'autoriser pareilles taxes."

et l'article 329 (4) ajoute:—

> "Les tarifs de concurrence doivent indiquer les taxes, moindres que celles du tarif-type, que doit percevoir la compagnie pour chaque catégorie de marchandises que comporte la classification, ou pour un genre particulier de produits ou de marchandises, à destination ou en provenance de quelques points spécifiés, que la Commission peut juger ou peut avoir déclarés être des points de concurrence soustraits à l'effet de l'article de la présente loi relatif aux parcours de longue et de courte distance."

Le cas qui nous occupe ne tombe pas dans l'exception, et la règle générale de l'égalité s'applique. Par conséquent, la compagnie de chemin de fer a agi arbitrairement et en contravention des dispositions de la Loi des chemins de fer dans ce cas-ci; je suis d'opinion que la Commission devrait ordonner une égalité de tarifs pour Sainte-Apolline et l'Ile-Verte, laquelle aurait été accordée si au lieu de faire partie du réseau des chemins de fer Nationaux du Canada, la ligne du Transcontinental avait été exploitée par une autre compagnie; du fait que les chemins de fer Nationaux du Canada ont le monopole du transport par rail dans ce territoire et qu'ils contrôlent les deux lignes, les expéditeurs ne devraient pas être privés des avantages dont ils bénéficieraient s'ils étaient desservis par des voituriers se faisant concurrence.

L'article 319 de la Loi des chemins de fer se lit comme suit:—

"Chaque fois qu'il est démontré qu'une compagnie de chemin de fer réclame à une personne, à une compagnie, à une catégorie de personnes ou aux habitants d'une région quelconque, pour des marchandises semblables ou analogues, ou pour des services de même nature, des taxes moins élevées que celles qu'elle exige d'autres personnes, d'autres compagnies, d'autres catégories de personnes, ou des habitants d'une autre région, ou qu'elle fait des distinctions dans la manière de traiter ces autres compagnies ou ces autres particuliers, il incombe à la compagnie de démontrer que ces taxes moins élevées ou cette différence de traitement ne constituent pas une préférence indue ou une disparité injuste."

Cet article suit les articles ci-dessus cités (314 et 317) et doit se lire comme s'y référant. Il impose à la compagnie de chemin de fer, chaque fois qu'il existe une différence de traitement, l'obligation de démontrer que ce traitement ne constitue pas une disparité injuste.

Il n'y a pas d'exception à cet article; il est impératif.

Le requérant a prouvé qu'il a souffert un préjudice, des pertes; la compagnie de chemin de fer a fait défaut de justifier son attitude comme elle y était obligée en vertu de l'article 319.

Les conclusions des jugements suivants sont *ad rem,* à savoir:—

Grand Trunk Ry. Co., vs Christie Henderson & Co., 9 C.R.C., page 502:—

"Il a été maintenu qu'en vertu de l'article 315 (4) (maintenant 314 (4)) de la Loi des chemins de fer on exige que *toutes les industries de concurrence doivent être traitées également.*

"Il a été maintenu que la compagnie de chemin de fer n'avait pas le droit d'imposer une taxe additionnelle pour frais d'aiguillage."

Pilon vs Grand Trunk Ry. Co., 16 C.R.C., p. 433:—

"Lorsqu'il appert qu'à un nombre considérable d'endroits d'Ontario, dans des circonstances et conditions plus ou moins analogues, il n'est pas établi de taxe additionnelle pour les mouvements d'aiguillage du trafic des voies d'évitement situées entre stations, cela constitue une disparité injuste d'établir un taux additionnel de $3 par wagon pour le mouvement d'aiguillage du trafic du requérant, un briquetier, d'une voie d'évitement à 2½ milles d'une station, C., lequel requérant fait concurrence à des briquetiers à ladite station."

J'accorderais cette partie de la requête qui concerne les tarifs sur le bois de charpente, et j'ordonnerais au chemin de fer d'accorder à Sainte-Apolline et aux autres endroits sur la ligne du Transcontinental les mêmes tarifs que ceux qui s'appliquent aux expéditeurs de l'Ile-Verte, de St-Pacôme, etc., durant la période qui s'étend du 15 avril au 30 novembre.

OTTAWA, ONT., le 16 février 1937.

ORDER No. 54013

In the matter of the application of J. Maurice Chouinard, of Tourville, Quebec, for an Order directing a reduction in freight rates on mill refuse and lumber, in carloads, from Ste. Apolline and other points on the Armagh Subdivision of the Canadian National Railways to Quebec and Montreal.

File No. 26901.49.3

MONDAY, the 22nd day of February, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon hearing the application at the sittings of the Board held at Quebec, January 11, 1937, in the presence of counsel for the railway company, the applicant appearing in person, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

H. GUTHRIE,
Chief Commissioner.

Application of the Municipality of the Parish of Sayabec, County of Matapedia, P.Q., for an Order authorizing that the private road or existing farm crossing, over the line of the Canadian National Railways, at Pouliot Road, Parish of Sayabec, be converted into a public crossing.

File No. 39238.

JUDGMENT

GUTHRIE, *Chief Commissioner:*

On September 11, 1934, the Municipality of the Parish of Ste. Marie de Sayabec made application to the Board for the construction of a public crossing at Pouliot's Road, formerly known as Pearson's Road, over the track of the Canadian National Railways at mileage 74·06 Matapedia Subdivision. The application was heard at Quebec on October 28, 1935, and again on May 5, 1936. At these hearings the Department of Roads and Mines of the Province of Quebec was represented by counsel who also appeared on behalf of the applicant municipality. The railway company was also represented by counsel at both hearings.

Pouliot Road runs in a northeasterly and southwesterly direction between the Matapedia highway and the Second Range Road in the municipality of Ste. Marie de Sayabec. The Matapedia highway is about one mile northeast of the railway, and the Second Range Road is about 190 feet southwest of the railway. Pouliot Road, originally known as Pearson Road, was built in its present location and opened to the public in the year 1900 and was homologated by the said Parish on the 3rd day of June, 1907. The road has been improved to some extent, is partially gravelled and is now maintained by the Provincial Road Department. It provides a connection to the Matapadia highway from the Second Range Road, and the farms on both sides of this road are occupied. This road also gives access to the village of St. Cleophas situated southwest of the railway, and also provides direct connection with a saw-mill near St. Peter river and also to the village of Sayabec. At the present time the railway crossing over this roadway is in the nature of a farm crossing. There is a gate at the south right of way fence which is usually left open. At the north right of way fence there appear to be no gates and a portion of the fence is out of repair. There are no crossing signs or stop signs at this crossing.

The Matapedia Subdivision of the Canadian National Railways originally formed part of the Intercolonial Railway, and the plans filed by the Intercolonial Railway at the time of construction of the railway in September, 1870, do not show the existence of a road at this point. The Parish of Sayabec was established in 1897 and the official cadastral map of the parish made in 1904 shows Pearson Road, now the Pouliot Road. To the southeast of the Pouliot Road crossing

there is another crossing two and three-quarter miles away, and to the northwest there is a crossing two miles away near Sayabec station.

The railway company claims seniority at the point of this crossing, and submits that there is no necessity for a public crossing at this point, but if a public crossing is to be established the railway company contends that the municipality bear all the expense in regard to same and be responsible for all future expense in regard to any protection of this crossing which might hereafter be ordered.

From the evidence which was adduced at the hearing I am satisfied that for many years prior to the year 1900 some kind of a road or trail existed for local traffic between the Second Range Road and the Matapedia highway. It is possible that the original roadway was not in the exact location of the present Pouliot Road, but the railway certainly crossed the original roadway at some point in the vicinity of the present crossing. A statutory declaration was filed on behalf of the applicants, made by four old residents of the neighbourhood, in which it is stated that in 1898 there existed a public road crossing at a point about five or six arpents southeasterly of the present crossing at Pouliot Road; that in 1898 the crossing was a public crossing, and that the roadway had been in existence for forty years prior to the above date. They also state in this declaration that the crossing has always been used by the public and has never been used as a private or farm crossing. They also allege that Adolphe Tremblay and Jean Baptiste St. Pierre (both now deceased) had on different occasions stated to them that at the time of the construction of the railway they (Tremblay and St. Pierre) had travelled by the said road to and from their boarding house to work on the railway construction. While statements of this nature cannot be accepted as evidence to establish the fact they do lend some weight to the probability that the said roadway was actually in existence prior to the construction of the railway. It is also to be noted that according to the plan filed, Pouliot Road is located immediately between two numbered lots. I am satisfied that Pouliot Road was used generally by the farmers in the neighbourhood as a connecting road between the Second Range Road and the Matapedia highway. Pouliot Road was fenced on both sides and the fences extended on both sides of the railway. One may reasonably assume that the railway has been aware for many years that the public was using this crossing as a public crossing without any protest or objection on the part of the railway, and in the meantime the railway continued to maintain the crossing by planking it between the rails.

I am satisfied from the facts adduced upon the hearing of this application, that prior to the construction of the Matapedia branch of the Intercolonial Railway Company there did exist some kind of a roadway or trail which was used by the public in the locality as a connecting link between the Second Range Road and the Matapedia highway. I am also satisfied that the railway crossed this roadway at some point near the present crossing, and under these circumstances I would hold that the roadway is senior to the railway company at this point.

A Divisional Engineer of the Board made an examination of this crossing in December, 1934, and in his report the Divisional Engineer states that there is a fair amount of traffic on this road which requires the construction of a public railway crossing.

The estimate furnished by the railway company for the conversion of this crossing into a public crossing only involves an expenditure of a sum of $95. I think an order should be made for the construction of a public crossing at the point where Pouliot Road crosses the railway track, and that the cost of same and future maintenance should be placed upon the railway.

March 2, 1937.

The Assistant Chief Commissioner and the Deputy Chief Commissioner concurred.

TRADUCTION

Requête de la municipalité de la paroisse de Sayabec, comté de Matapédia, Qué., demandant l'autorisation de convertir le chemin privé ou passage de ferme qui existe actuellement à travers la voie des chemins de fer Nationaux du Canada, sur le chemin Pouliot, dans la paroisse de Sayabec, en un passage de voie publique.

Dossier nº 39238

JUGEMENT

GUTHRIE, *Commissaire en chef:*

Le 11 septembre 1934, la municipalité de la paroisse de Ste-Marie de Sayabec produisit une requête à la Commission pour la construction d'un passage de voie publique sur le chemin Pouliot, autrefois connu sous le nom de "chemin Pearson", à travers la voie des chemins de fer Nationaux du Canada, au mille 74.06 de la subdivision de Matapédia. Cette requête fut entendue à Québec le 28 octobre 1935, et de nouveau le 5 mai 1936. A ces auditions, le ministère de la Voirie et des Mines de la province de Québec était représenté par un avocat qui comparut en même temps pour la municipalité requérante. La compagnie de chemin de fer était aussi représentée par un avocat aux deux auditions.

Le chemin Pouliot va dans une direction nord-est et sud-ouest entre la route de Matapédia et le chemin du deuxième rang de la municipalité de Ste-Marie de Sayabec. La route de Matapédia passe à environ un mille au nord-est du chemin de fer, et le chemin du deuxième rang se trouve situé à environ 190 pieds au sud-ouest de la voie ferrée. Le chemin Pouliot, connu à l'origine sous le nom de chemin Pearson, fut construit sur son emplacement actuel et ouvert à la circulation publique en l'année 1900, et fut homologué par ladite paroisse le 3 juin 1907. Le chemin a été passablement amélioré; il est partiellement couvert de gravier et actuellement entretenu par le ministère de la Voirie de la province. Il sert de chemin de raccordement avec la route de Matapédia à partir du chemin du deuxième rang, et il y a des fermes d'établies des deux côtés du chemin. Ce chemin donne aussi accès au village de St-Cléophas situé au sud-ouest du chemin de fer et sert aussi de raccordement direct avec un moulin à scie situé près de la rivière St-Pierre, et aussi avec le village de Sayabec. A l'heure qu'il est, le passage à niveau sur ce chemin a le caractère d'un passage de ferme. Il y a une barrière à la clôture du côté sud de l'emprise qui est d'ordinaire laissée ouverte. A la clôture du côté nord de l'emprise, il appert qu'il n'y a pas de barrières, et une partie de la clôture est en mauvais état. Il n'y a pas d'écriteaux de danger ni de signaux d'arrêt d'installés à ce passage.

La subdivision de Matapédia des chemins de fer Nationaux du Canada faisait partie à l'origine du chemin de fer Intercolonial, et les plans produits par celui-ci à l'époque de sa construction en septembre 1870 n'indiquent pas qu'il existait un chemin à cet endroit. La paroisse de Sayabec fut érigée en 1897 et la mappe officielle du cadastre de la paroisse publiée en 1904 montre le chemin Pearson, aujourd'hui le chemin Pouliot. Au sud-est du passage du chemin Pouliot, il existe un autre passage à une distance de deux milles et trois quarts, et au nord-ouest il y a un passage à une distance de deux milles, près de la station de Sayabec.

La compagnie de chemin de fer prétend qu'elle a le droit de priorité à ce passage et soumet qu'il n'y a pas de nécessité d'établir un passage de voie publique à cet endroit; elle prétend de plus que si un passage public doit être établi, la municipalité devrait en assumer toutes les dépenses et être responsable pour toutes celles qui surviendront à l'avenir relativement à la protection dudit passage, laquelle protection pourrait être requise par la suite.

Par la preuve qui a été faite à l'audition, je suis convaincu que pendant plusieurs années avant 1900, il a existé un chemin quelconque ou un sentier à l'usage du trafic local entre le chemin du deuxième rang et la route de Matapédia.

Il est possible que le chemin, à l'origine, n'était pas exactement à l'endroit où se trouve le chemin Pouliot actuel, mais la voie ferrée le traversait certainement à un endroit dans le voisinage du passage actuel. On a produit une déclaration statutaire pour le compte des requérants, faite par quatre vieux résidents du voisinage, où il est dit qu'en 1898, il existait un passage de voie publique à un endroit situé à environ cinq ou six arpents au sud-est du présent passage sur le chemin Pouliot; qu'en 1898, le passage était public et que le chemin avait été en existence durant quarante ans avant la date mentionnée ci-dessus. Ces vieux résidents disent aussi dans leur déclaration que le public s'est toujours servi de ce passage et que celui-ci n'a jamais été utilisé comme un passage privé ou de ferme. Ils allèguent aussi qu'Adolphe Tremblay et Jean-Baptiste St-Pierre (tous deux maintenant décédés) leur avaient dit à différentes occasions qu'à l'époque de la construction du chemin de fer eux-mêmes (Tremblay et St-Pierre) avaient voyagé par ledit chemin en allant à leur maison de pension et en en revenant pour aller travailler à la construction du chemin de fer. Bien que des déclarations de cette nature ne puissent pas être acceptées comme preuve pour établir le fait, elles donnent toutefois du poids à la probabilité que ledit chemin existait avant la construction du chemin de fer. On doit aussi noter que d'après le plan versé au dossier, le chemin Pouliot se trouve immédiatement situé entre deux lots numérotés. Je suis convaincu que le chemin Pouliot a été utilisé d'une façon générale par les fermiers du voisinage comme un chemin de raccordement entre le chemin du deuxième rang et la route de Matapédia. Le chemin Pouliot fut clôturé des deux côtés, et les clôtures se prolongèrent des deux côtés du chemin de fer. On peut raisonnablement présumer que le chemin de fer savait depuis longtemps que le public se servait de ce passage comme un passage public sans protestation ou objection de sa part, et pendant tout ce temps le chemin de fer continuait à entretenir le passage en y plaçant des madriers entre les rails.

Je suis convaincu de par les faits rapportés lors de l'audition de la présente requête qu'avant la construction de l'embranchement de Matapédia de la compagnie du chemin de fer Intercolonial, il existait un certain chemin ou sentier qu'utilisait le public de la localité comme un chemin de raccordement entre le chemin du deuxième rang et la route de Matapédia. Je suis convaincu aussi que le chemin de fer traversait ce chemin à un certain endroit près du passage actuel, et dans les circonstances je maintiendrais que le chemin a existé avant le chemin de fer à cet endroit.

Un ingénieur de division de la Commission fit une inspection à ce passage au mois de décembre 1934, et il déclara dans son rapport qu'il y a un trafic assez considérable sur ce chemin, lequel exige la construction d'un passage de voie publique.

L'estimation donnée par la compagnie de chemin de fer pour la conversion de ce passage en un passage public ne comporte qu'une dépense de $95. Je crois qu'une ordonnance devrait être rendue pour l'établissement d'un passage public à l'endroit où le chemin Pouliot traverse la voie ferrée, et que la construction et l'entretien futur dudit passage devraient être aux frais du chemin de fer.

Le 2 mars 1937.

Le Commissaire en chef adjoint et le Commissaire en chef suppléant se sont ralliés au jugement ci-dessus.

ORDER No. 54043

In the matter of the application of the Municipality of the Parish of Sayabec, in the County of Matapedia, Province of Quebec, hereinafter called the "Applicant," under Section 256 of the Railway Act, for an Order authorizing that the private road or existing farm crossing over the Canadian National Railways at Pouliot Road be converted into a public crossing.

File No. 39238

FRIDAY, the 5th day of March, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*

Upon hearing the application at the sittings of the Board held at Quebec, October 28, 1935, and May 5, 1936, in the presence of counsel for the applicant and the railway company, and what was alleged,—

It is ordered: That the applicant be, and it is hereby, authorized to construct a public crossing over the Canadian National Railways on Pouliot road, in the parish of Sayabec, county of Matapedia, and province of Quebec, as shown on the plan and profile on file with the Board under file No. 39238, and in accordance with and subject to the Standard Regulations of the Board Affecting Highway Crossings.

2. That the cost of constructing and maintaining the said highway crossing be borne and paid by the Canadian National Railways.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 54022

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 24th day of February, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in items 5B and 225A in Supplement No. 36 to Tariff C.R.C. No. 906, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said items Nos. 5B and 225A in Supplement No. 36 to Tariff C.R.C. No. 906, approved herein, are as follows:—

From	Cents per 100 pounds
Item 5B	
Falmouth, N.S.	8½
Item 225A	
Clifton, N.S.	8½

H. GUTHRIE,
Chief Commissioner.

ORDER No. 54023

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 24th day of February, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in items Nos. 51 and 52 in Supplement No. 7 to Tariff C.R.C. No. 986, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the said company's proportions to be reported as shown below.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportions of the normal tolls, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said items Nos. 51 and 52 in Supplement No. 7 to Tariff C.R.C. No. 986, approved herein, are as follows:—

Item	Cents per 100 pounds Billed	Normal
51	18.4	23
52	13.6	17

H. GUTHRIE,
Chief Commissioner.

ORDER No. 54032

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

MONDAY, the 1st day of March, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders: That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement 39 to Tariff C.R.C. No. E-1911.
Supplement 40 to Tariff C.R.C. No. E-1911.
Supplement 13 to Tariff C.R.C. No. E-1231.
Supplement 44 to Tariff C.R.C. No. E-1247.
Supplement 33 to Tariff C.R.C. No. E-1689.
Supplement 10 to Tariff C.R.C. No. E-2444.
Supplement 11 to Tariff C.R.C. No. E-2444.
Tariff C.R.C. No. E-2541.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 54033

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

MONDAY, the 1st day of March, A.D. 1937.

Hon. HUGH GUTHRIE. K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 754, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 754, approved herein, are as follows:—

	Cents per 100 pounds
St. Hilaire, N.B.	9½
Baker Brook, N.B.	11½
Caron Brook, N.B.	11½

H. GUTHRIE,
Chief Commissioner.

ORDER No. 54036

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 4th day of March, A.D. 1937

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board Orders:

1. That the toll published in item No. 110H of Supplement No. 13 to Tariff C.R.C. No. E-4316, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item No. 110H of Supplement No. 13 to Tariff C.R.C. No. E-4316 approved herein, is—

To	Cents per 100 pounds
West Saint John, N.B.	2½

H. GUTHRIE,
Chief Commissioner.

ORDER No. 54037

In the mater of the tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 4th day of March, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board Orders:

1. That the tolls published in items 250 of 5th revised page 23, 620 of 5th revised page 36, and 667 of 3rd revised page 39 in Tariff C.R.C. No. E-4757, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls, for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said items Nos. 250, 620, and 667 in Tariff C.R.C. No. E-4757, as specified in paragraph 1 hereof, are as follows, namely:—

Item	Per ton of 2,000 pounds
250	1.60
620	Cents per 100 pounds
From Aylesford, N.S., to Quebec, Que.	59
From Kingston, " "	58½
From Lakeville, " "	59
From Sheffield Mills, N.S., to "	59
From Wolville, " "	59
667	
From West Saint John, N.B.	7½

From points on the Dominion Atlantic Railway one and one-half cents per 100 pounds to be deducted account of water haul.

H. GUTHRIE,
Chief Commissioner.

ORDER No. 54038

In the matter of tariffs and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12.

THURSDAY, the 4th day of March, A.D. 1937.

Hon. HUGH GUTHRIE, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board Orders:

1. That the tolls published in items No. 345 of 2nd revised page 25, No. 425 of 1st revised page 29, No. 520 of 1st revised page 32, and No. 1210 of 2nd revised page 54 of Tariff C.R.C. No. E-4757, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls, for the purpose of reimbursement under section 3 of section 9 of the said Act, on traffic carried under the said items in Tariff C.R.C. No. E-4757, as specified in paragraph 1 hereof, are as follows, namely:—

Item	Cents per 100 pounds C.L.	L.C.L.
345		
Belleville, Ont.	65	105
Brantford, Ont.	74½	121½
Chatham, Ont.	78	128
Fort William, Ont	107	202
Galt, Ont	74½	121½
Guelph, Ont	72	118
Hamilton, Ont	70	115
Kingston, Ont	65	105
Kitchener, Ont.	74½	121½
London, Ont.	76	125
Montreal, Que	62½	101
North Bay, Ont	72½	118½
Oshawa, Ont.	68½	111½
Ottawa, Ont	63½	103½
Peterborough, Ont.	66½	109
Port Arthur, Ont	107	202
Quebec, Que.	60	96½
St. Hyacinthe, Que.	62½	101
St. Thomas, Ont.	78½	128½
Sault Ste. Marie, Ont.	86	143½
Sherbrooke, Que.	62	100½
Sudbury, Ont.	78½	128½
Toronto, Ont.	68	111
Trois Rivieres, Que	59½	96½
Windsor, Ont.	80	132
Woodstock, Ont.	76	125
Item		
425	2nd and 3rd class rates covered by previous Orders will apply.	
520	1st class rate covered by previous Order will apply.	
1210		
To Perth, N.B.	42½	
To Plaster Rock, N.B.	36½	

From and to points on the Dominion Atlantic Railway one and one-half cents per 100 pounds to be deducted account of water haul.

H. GUTHRIE,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR JANUARY, 1937

Railway accidents	187,	with 16 persons killed	and 227 injured.
Railway accidents at highway crossings	16,	with 1 person killed	and 23 injured.
	203	17	250

	Killed.	Injured.
Passengers	2	65
Employees	7	152
Others	8	33
	17	250

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents

PRINCE EDWARD ISLAND

1 Automobile—Driven on to crossing in front of train and was struck. Licence P.E.I. 2742.

QUEBEC

1 Automobile—Auto driver failed to stop for crossing. Licence Que. FH-6804.
1 Auto Truck—Truck driver failed to stop for crossing. Licence Que. F-11827.

ONTARIO

3 Automobile—Driver failed to heed signals given by watchman. Licences Ont. 23-D-69, Ont. 4-F-531, Ont. 5-F-271.
3 Automobile—Ran into side of train. Licences Ont. 15-H-3, Ont. 10-P-3, Ont. DU-336.
1 Automobile—Driver disregarded bell and wigwag. Licence Ont. 642-R-4.
2 Auto Truck—Driven onto crossing in front of train and struck. Licences Ont. 44-274-C, Ont. 49008-C.
1 Pedestrian—Walked onto track in path of train.

SASKATCHEWAN

1 Automobile—Ran into side of train. Licence Sask. 42995.

BRITISH COLUMBIA

2 Automobile—Ran into side of train. Licences B.C. 44-603, B.C. 38-601.

Of the sixteen accidents at highway crossings, eleven occurred at unprotected crossings and five at protected crossings. Eight of the accidents occurred during the daylight hours and eight at night.

March 4, 1937.

SUMMARY OF ORDERS ISSUED BY THE BOARD OF RAILWAY COMMISSIONERS

53925. Jan. 28—Declaring C.N.Rys. crossing, first west of Charny Station, Quebec, protected to Board's satisfaction.

53926. Jan. 30—Approving plan No. 1351-C, showing proposed reconstruction of highway bridge carrying the line of Dundurn St. South, Hamilton, Ont. over the T.H. & B. Rly. Co's Waterford Subdivision.

53927. Jan. 28—Rescinding Order No. 29100 dated Dec. 5, 1919, *re* siding constructed by the C.N.R. on the road allowance between Con. 1 and 2, Township of Brant, Ont.

53928. Jan. 29—Ordering abandonment of certain trackage of the C.N.R. which crosses Lindsay, Regent, Colborne, and Francis Sts., Lindsay, Ont.

53929. Jan. 30—Authorizing the Northern Alberta Rlys. Co. to construct spur to serve Industrial Minerals Ltd. at Waterways, Alta.

53930. Jan. 30—Authorizing construction branch line by the New York Central Railroad Co. to serve the H. J. Heinz Company, Leamington, Ont.

53931. Jan. 30—Authorizing the C.N.R. to (1) close the north and south road allowance the S.W. ¼, sec. 29–30–18, W. P. M., and the SE. ¼ sec. 30–30–18, W. P. M.; (2) close existing crossing just north of the crossing of the N. and S. road allowance between the SW. ¼ of sec. 29–30–18, W. P. M., and the SE. ¼ of sec. 30–30–18, W. P. M., and the SE. ¼ of sec. 30, 30, 18, W. P. M.; (3) to construct crossing on the east and west road allowance between secs. 30 and 19–30–18 W. P. M.

53932. Feb. 1—Ordering the installation by the C.N.R. of double bells and wigwags at crossing of the highway north of Inglewood Station, Ont.

53933. Feb. 1—Ordering the C.N.R. to install double bells and wigwags at highway crossing south of Tansley Station, Ont.

53934. Jan. 30—Authorizing C.N.R. to operate their trains over certain portion of the Mawer Southwesterly Branch, at a rate not exceeding 25 miles an hour.

53935. Jan. 30—Authorizing the C.N.R. to operate their trains over portion of Mawer Southwesterly Branch, at a rate not exceeding 25 miles an hour.

53936. Feb. 1—Ordering the C.P.R. to install double bells and wigwags at the crossing of the highway east of Dewdney Station, B.C. Mileage 81·48 Cascade Subdiv.

53937. Feb. 2—Refusing the application of the Quebec-Montmorency Chamber of Commerce, for an order directing the Bell Telephone Co. to extend the Quebec local exchange area to include all subscribers within ten miles from the City of Quebec.

53938. Feb. 2—Declaring the C.P.R. crossing 1·4 miles west of Chesterville, Ont., protected to the Board's satisfaction.

53939. Feb. 2—Declaring the C.N.R. crossing of Main street, Hamilton, Ont., protected to the Board's satisfaction so long as the present speed restriction of ten miles an hour is in effect.

53940. Feb. 1—Declaring the Grand River Railway crossing of Queen st., Kitchener, Ont., protected to the Board's satisfaction so long as the present speed limitation of three miles an hour is in effect.

53941. Feb. 2—Authorizing the C.N.R. to discontinue flag station at Garnett, Ont. as a stopping place.

53942. Feb. 1—Declaring the C.N.R. crossing at Dalhousie st., Brantford, Ont., protected to the Board's satisfaction so long as the present speed restriction of ten miles an hour is in effect.

53943. Feb. 2—Authorizing C.N.Rys. to operate over Ridgedale Northeasterly Branch, mileage 23·70 to 52·65 (speed 25 miles an hour).

53944. Feb. 2—Directing that 40 per cent of cost of grading approach to north side of C.N.Rys. crossing between Lots 31 and 32, Con. 1, Tp. Lancaster, Ont., be paid out of Railway Grade Crossing Fund.

53945. Feb. 2—Approving agreement between Bell Telephone Co., and Pontiac Rural Telephone Co., Ltd.

53946. Feb. 2—Approving agreement between Bell Telephone Co., and Campbell's Bay Rural Tel. Co., Ltd.

53947. Feb. 2—Approving agreement between Bell Telephone Co., and Fort Coulonge Rural Tel. Co., Ltd.

53948. Feb. 2—Declaring C.P.R. crossing just south of Knowlton Station, Que., protected to Board's satisfaction, so long as speed limitation of 10 miles an hour is in effect.

53949. Feb. 4—Approving under Maritime Freight Rates Act, sec. 3. sub-sec. 3, tolls published in tariffs and supplements filed by C.N.Rys. under sec. 3.
53950.

53951. Feb. 4—Directing C.N.Rys. to install automatic bell and wigwag at crossing at Ritchie Lake, N.B.

53952. Feb. 4—Directing C.N.Rys. to install double bells and wigwags at crossing at Enfield, N.S.

53953. Feb. 4—Directing Dominion Atlantic Ry. to install automatic bell and wigwag at crossing of Trunk Highway No. 1 at Weymouth, N.S.

53954. Feb. 4—Extending until May 31, 1937, time within which C.N.Rys. may install bell and wigwag at 2nd crossing west of Carp, Ont.

53955. Feb. 4—Directing C.N.Rys. to install double bells and wigwags at crossing of Alexandre Taschereau Boulevard, Greenfield Park, Que.

53956. Feb. 4—Directing C.P.R. forthwith to re-establish gates and roadway over its tracks about one-half mile above Pointe au Chene, Que.

53957. Feb. 4—Refusing application of C.N.Rys. to remove station agent at Corning, Sask.

53958. Feb. 6—Amending Order 15377, Nov. 7, 1911, to provide that cost of maintaining and operating gates at crossing of C.N.Rys. 300 yards west of Cornwall Station, Ont., be paid 45 per cent by United Counties of Stormont, Dundas, and Glengarry and 55 per cent by C.N.Rys.

53959. Feb. 8—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in tariffs filed by C.N.Rys. under sec. 3.

53960. Feb. 9—Extending until June 30, 1937, time within which C.P.R. may construct branch line to serve Coldwater Crushed Stone, Ltd. at Medonte, Ont.

53961. Feb. 8—Authorizing C.P.R. to remove station building at west end of Lambton Yards, Ont.

53962. Feb. 8—Approving location and details of C.N.Rys. proposed shelter at Cap aux Oies, Que.

53963. Feb. 8—Directing that, with respect to non-competitive carload traffic between local stations on C.P.R. and Beach Furniture Ltd., involving interswitching movements by Cornwall Street Ry. Light & Power Co., as intermediate carrier, and C.N.R.Rys. as terminal carrier, the provisions of General Order No. 252 are applicable and require the C.P.R. as line carrier to absorb not less than (*a*) one-half of tolls charged by terminal carrier under sec. 5, as qualified by sec. 9 of said General Order 252 (*b*) one dollar and fifty cents per car, irrespective of weight, in respect of tolls charged by intermediate carrier; provided that line carrier, unless its tariff is lower, charge $12 per car for its haul between interchange and point of shipment, or destination, when by reason of such absorption, its line charges would otherwise be less than that amount.

53964. Feb. 9—Approving proposed Supplement "H" to Express Classification for Canada No. 8.

53965. Feb. 9—Declaring C.N.Rys. crossing of Rectory street, London, Ont., protected to Board's satisfaction.

53966. Feb. 9—Declaring C.P.R. crossing 8/10 of a mile west of Indian River Station, Ont., protected to Board's satisfaction.

53967. Feb. 10—Declaring C.N.Rys. crossing of Keene road, east of Peterboro, Ont., protected to Board's satisfaction.

53968. Feb. 10—Declaring C.N.Rys. crossing of Christina street, Sarnia, Ont., satisfactorily protected so long as speed limitation of 10 miles an hour is in effect.

53969. Feb. 9—Approving Supp. 4 to agreement between Bell Telephone Co., and La Compagnie de Telephone Nationale.

53970. Feb. 9—Approving agreement and supplement between Bell Telephone Co. and Hazeldean Rural Telephone Co., Ltd.

53971. Feb. 10—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls published in tariffs of C.N.Rys. filed under sec. 3.

53972. Feb. 10—Approving and authorizing clearances at door marked "Z" into building of Canadian Fertilizer Co., at Chatham, Ont., C.N.Rys.

53973. Feb. 11—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, toll published in item 1 to tariff C.R.C. No. 56 filed by Sydney & Louisburg Ry. under sec. 9.

53974. Feb. 11—Declaring C.P.R. crossing of Harris Road, just west of Pitt Meadows Station, B.C., protected to Board's satisfaction.

53975. Feb. 11—Approving and authorizing clearances at loading platforms of Aldermac Copper Corprn., Ltd., at Aldermac, Que., Nipissing Central Ry.

53976. Feb. 12—Authorizing New York Central System to issue on three days' notice a supplement to tariff C.R.C. No. 3136 correcting clerical errors as published in supplement 23 to said tariff.

53977. Feb. 12—Directing C.N.Rys. forthwith to erect a closed-in shelter at public road crossing in Mun. of St. Jean Baptiste, Co. Rimouski, Que.

53978. Feb. 12—Authorizing Pere Marquette Ry. to dismantle station building at Sombra, Ont.

53979. Feb. 12—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls
53980. published in tariffs and supplements filed by C.P.R. under sec. 9.
53981.

53982. Feb. 12—Directing C.N.Rys. to install bell and wigwag at crossing of Trunk Highway No. 4 east of James River Station, N.S.

53983. Feb. 12—Authorizing P.E.I. Dep't Public Works to carry out certain improvements at crossings at Augustus Station, Wharf Road, Iris Station, St. Andrews, Lot 40, King's County, Baldwin Road, St. Theresa, Road No. 48, King's County, Highway at Dundee, Alley's Mills, P.E.I.

53984. Feb. 12—Directing Dominion Atlantic Ry. to install bell and wigwag at first crossing west of Weymouth, N.S.

53985. Feb. 12—Directing Dominion Atlantic Ry. to install bell and wigwag at crossing west of Falmouth, N.S.

53986. Feb. 12—Directing C.N.Rys. to install bell and wigwag at crossing of trunk road west of James River Station, N.S.

53987. Feb. 12—Directing Dominion Atlantic Ry. to install bell and wigwag at first crossing east of Falmouth, N.S.

53988. Feb. 12—Directing Dominion Atlantic Ry. to install bell and wigwag at crossing at Mount Denson Station, N.S.

53989. Feb. 13—Authorizing City of Lévis, Que., to remove obstruction to view caused by point of rock at crossing of St. Lawrence Street by C.N.Rys. west of Hadlow Station, Que.

53990. Feb. 15—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls
53991. published in tariffs and supplements filed by C.N.Rys. under sec. 3.
53992.

53993. Feb. 15—Declaring C.P.R. crossing (Moffatt's Crossing) one mile west of Pembroke Station, Ont.., protected to Board's satisfaction.

53994. Feb. 13—Authorizing Pere Marquette Ry. to dismantle station building at Port Lambton, Ont.

53995. Feb. 15—Approving C.N.Rys. plan showing proposed revision of interlocking plant at crossing over C.P.R. at Munroe, Man.

53996. Feb. 15—Approving C.N.Rys. plan showing proposed revision of interlocking plant at crossing over C.P.R. at Deer, Man.

53997. Feb. 16—Approving Supp. 1 to station contract service between Bell Tel. Co., and Salem Telephone Co., Ltd.

53998. Feb. 13—Declaring C.P.R. crossing of Raleigh Street, Chatham, Ont., satisfactorily protected so long as speed limitation of 10 miles an hour is in effect, switching movements flagged by member of train crew and cars kept back 100 ft. from crossing.

53999. Feb. 17—Authorizing C.P.R. to use and operate bridge over Red Deer River at East Coulee, Alta.

54000. Feb. 16—Directing that the maximum carload rate on lumber on forest products be 78 cts. to stations in eastern Canada taking Rate Bases 1 and 3 to 13, inclusive, in Agent Thompson's tariff C.R.C. No. 14, from points on C.P.R., Blairmore and east on the Crow's Nest line and Lake Louise and east on main line; from points on C.N.Rys. Galloway and east of main line; from all other points in Alberta on C.N.Rys.; from Spurrfield and points intermediate thereto on portion of Northern Alberta Rys. to stations in Eastern Canada taking Rate Basis 2 in Agent Thompson's tariff C.R.C. No. 14, the rates shall not exceed the 78-cent rate by more than the present spreads over the 81-cent rate. Rates in accordance herewith to be made effective within 10 days from receipt of this Order.

54001. Feb. 17—Relieving C.P.R. from maintaining cattle guards at crossing in lot 288, Village of Pont Rouge, Que.

54002. Feb. 15—Approving Supp. 1 to agreement between Bell Telephone Co., and Comm'rs for Telephone System of Mun. of Tp. of North Easthope.

54003. Feb. 16—Approving Supp. 1 to service station contract between Bell Telephone Co., and Bethesda-Mutual Telephone Co., Ltd.

54004. Feb. 16—Approving agreement and Supp. 1 thereto between Bell Telephone Co., and Monk Rural Telephone Co., Ltd.

54005. Feb. 18—Authorizing City of Sudbury, Ont., to construct highway crossing over C.P.R. at Douglas Street.

54006. Feb. 18—Declaring C.P.R. crossing three-quarter mile west of Castlegar, B.C., protected to Board's satisfaction.

54007. Feb. 18—Approving Supp. 1 to service station contract between Bell Telephone Co., and Comm'rs for Telephone System of Mun. of Tp. of Strong.

54008. Feb. 18—Declaring C.P.R. crossing 3·8 miles east of Yamachiche Station, Que., protected to Board's satisfaction.

54009. Feb. 19—Declaring C.N.Rys. crossing one mile east of Goderich, Ont., protected to Board's satisfaction.

54010. Feb. 19—Approving agreement between Bell Telephone Co., and Murray Brighton Telephone System.

54011. Feb. 19—Approving agreement between Bell Telephone Co., and Missisquoi Telephone Co., Ltd.

54012. Feb. 19—Directing Niagara, St. Catharines & Toronto Ry. to make certain improvements to bridge and approaches on Portage Road, Tp. Stamford, Ont.

54013. Feb. 22—Refusing application of J. Maurice Chouinard, Tourville, Que., for reduction in freight rates on mill refuse and lumber, in carloads, from Ste. Apolline, Que., to Quebec and Montreal.

54014. Feb. 22—Amending Order 53934, Jan. 30, 1937, by striking out words "to present end of track, a distance of 35·0 miles" in 6th and 7th lines of operative part, and substituting therefor the words "to mileage 35·0"—C.N.Rys. operation of trains over Mawer Southwesterly Branch, mileage 0 to 35·0.

54015. Feb 22—Declaring C.N.Rys. crossing of Maitland Street, London, Ontario, satisfactorily protected so long as speed limitation of 10 miles an hour is in effect, watchmen maintained on a 24-hour service, and all switching movements not protected by watchmen to be flagged.

54016. Feb. 23—Authorizing C.N.Rys. to establish public highway crossing at First Street, Star City, Sask.

54017. Feb. 24—Declaring C.P.R. crossing of William Street, Chatham, Ont., protected to Board's satisfaction.

54018. Feb. 24—Declaring C.P.R. crossing, first east of Drumbo Station, Ont., protected to Board's satisfaction.

54019. Feb. 24—Declaring C.P.R. crossing of Tecumseh Road, Windsor, Ont., protected to Board's satisfaction.

54020. Feb. 23—Authorizing Ont. Dep't Highways to construct crossing over C.P.R. in Lot 2, Con. 3, Tp. McKim, Co. Sudbury, Ont.

54021. Feb. 23—Authorizing C.P.R. to construct spur to serve Consolidated Mining & Smelting Co., Ltd., in Sublot 2, Lot 4597, Group 1, Kootenay District, B.C.

54022. Feb. 24—Approving under Maritime Freight Rates Act, sec. 3, sub-sec. 3, tolls
54023. published in tariffs and supplements filed by Dominion Atlantic Ry. under sec. 9.

54024. Feb. 24—Approving and authorizing clearances at sidings serving Acadia Sugar Refining Co., Ltd., at Woodside, N.S.—C.N.Rys.

54025. Feb. 26—Amending Order 53431, Sept. 8, 1936, by substituting plan No. R-96F, Dec. 10, 1936, for plan No. R-96/1A, Mar. 4, 1936, and by striking out paragraph 2 and substituting therefor clause providing that 55 per cent of cost be paid out of Rys. & Canals Vote No. 420, remainder by applicant—Ont. Dep't Northern Development diversion of highway under C.P.R. bridge over Wabigoon River at Dryden, Ont.

54026. Feb. 24—Directing that all movements over C.N.Rys. crossing of Rectory Street, London, Ont., on tracks other than those protected by gates, be flagged by a member of train crew.

54027. Feb. 24—Declaring C.N.Rys. crossing of St. Joseph Street, first west of Drummondville Station, Que., satisfactorily protected so long as train movements on all tracks which do not operate bells and wigwags be flagged by a member of train crew.

54028. Feb. 25—Declaring C.N.Rys. crossing, first west of l'Epiphanie Station, Que., protected to Board's satisfaction.

54029. Feb. 27—Authorizing C.P.R. to close down interlocking plant at crossing of Kettle Valley Ry. and C.N.Rys. at Hope, B.C.

54030. Feb. 27—Authorizing C.P.R., until traffic is resumed, to remove the station agent at Hope, B.C.

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